TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1918

No. [redacted]178

DOMINION HOTEL, INC., PLAINTIFF IN ERROR,

vs.

THE STATE OF ARIZONA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARIZONA.

FILED APRIL 24, 1917.

(25,921)

(25,921)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 484.

DOMINION HOTEL, INC., PLAINTIFF IN ERROR,

vs.

THE STATE OF ARIZONA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARIZONA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 4, 917.

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a In the Supreme Court of the State of Arizona.

Criminal Cause No. 407.

DOMINION HOTEL, INC., Appellant,

v.

STATE OF ARIZONA, Respondent.

TRANSCRIPT OF RECORD.

Appearances.

For Appellant:

Mr. S. H. Morris.
Mr. James R. Malott.
Mr. R. L. Alderman.
Mr. F. J. Elliott and
Mr. E. E. Ellinwood.

For Respondent:

Hon. Wiley E. Jones, Att'y General.
Mr. Geo. W. Harben, Ass't Att'y General.
Mr. R. W. Kramer Ass't Att'y General, and
Mr. Norman J. Johnson, County Attorney.

1 In the Superior Court of Gila County, State of Arizona.

THE STATE OF ARIZONA, Plaintiff,

vs.

DOMINION HOTEL, INC., Defendant.

Information.

In the name and by the authority of the State of Arizona, Dominion Hotel, Inc. is accused by the County Attorney, of and for Gila County, State of Arizona, by this information, of the crime of misdemeanor committed as follows, to-wit:

That the Dominion Hotel, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Arizona, and the said corporation is, and heretofore has been, and was upon the twenty-eighth (28th) day of February A. D. 1914, engaged in the hotel business in Globe, Gila County, State of Arizona, and did then and there run and operate the Dominion Hotel; that said
2 corporation did upon the twenty-eighth (28th) day of February A. D. 1914, unlawfully permit one, Agnes Silka, female

person to be employed by it in said hotel and work eight (8) hours, and that said eight (8) hours of work was not then and there performed within a period of twelve (12) hours, and the said Dominion Hotel, Inc., not being then and there engaged in the business of conducting a railroad restaurant or eating house located upon a railroad right-of-way, or operated by, or under contract, with any railroad company contrary to the form, force and effect of the statutes in such cases made and provided, and against the peace and dignity of the State of Arizona.

NORMAN J. JOHNSON,
County Attorney in and for Gila County, State of Arizona.

Indorsed: Filed in the Superior Court of Gila County, State of Arizona, by the County Attorney of said County, this 11th day of May, 1914. J. W. Wentworth, Clerk. By Elsie Patton, Deputy.

Title of Court and Cause.

Amended Demurrer.

3 Comes now the defendant, by its attorneys, and demurs to the information in the above entitled action on the following grounds, to-wit:

I.

That it appears upon the face of said information that it fails to state facts sufficient to constitute a crime or a public offense under the laws of the State of Arizona or at all.

II.

That it appears upon the face of said information that it fails to state facts sufficient to constitute a crime or a public offense under the laws of the State of Arizona or at all, because said information undertakes to state a public offense under the terms of Chapter 70 of the Laws, Regulations and Memorials of the Third Special Session of the First Legislature of the State of Arizona, constituting Sections 717 to 720 inclusive of the Penal Code of the State of Arizona of 1913, and such act is violative of the Fourteenth Amendment of the Constitution of the United States of America in this, to-wit:

1. That said act in providing that the eight hour working
4 period prescribed for females in certain designated occupations must not extend over a period of more than twelve hours, is such an unreasonable, unwarranted and arbitrary regulation of the working hours of women as to be entirely without justification even under the guise of the so-called police power, and is an arbitrary and capricious restraint of the defendant's liberty of contract;

2. That said act denies to this defendant equal protection of the

laws of the state, inasmuch as said act makes an exception of the application of the law to a certain class of employers of female labor, similarly situated with others of the same class, namely, to employers of female labor in railroad restaurants and eating houses located upon railroad rights of way and operated by or under contract with any railroad company, and is therefore void as unjust and discriminatory legislation.

Wherefore, this defendant prays that such information be held insufficient and that the defendant be hence dismissed.

ALDERMAN & ELLIOTT,
Attorneys for Defendant.

Filed Jan. 6, 1916.

5 Title of Court and Cause.

Minute Entries.

Be it remembered that heretofore and to-wit: On the 7th day of January, 1916, the same being one of the regular juridical days of said Court, the following order was made and entered, in said Court, in said cause, which order is in figures and words, as follows, to-wit:

Trial.

239-A.

THE STATE OF ARIZONA

vs.

DOMINION HOTEL, INCORPORATED.

The County Attorney being present and the defendant present by counsel, the demurrer to the information is overruled, to which ruling the defendant excepts; whereupon the defendant by its attorney enters a plea of not guilty of the offense charged, and thereupon both parties announce ready for trial, and the Clerk is ordered to draw from the trial jury box the names of eighteen jurors, which is done; and thereupon the jurors so drawn are sworn on their voir dire, and thereupon the County Attorney made a statement to the jury and stated the nature of the case; and thereupon counsel proceeded to examine the jurors and J. W. Hogue is challenged by the
6 plaintiff, which is allowed by the court, and said juror is excused and thereupon Sam Van Winkle is drawn and said juror is sworn; the examination having been completed, and the jurors in the jury box having been passed for cause by both plaintiff and defendant, the respective parties are ordered to strike the jury list, and the panel is admonished by the Court and excused for twenty minutes, to which time the trial is suspended; and subsequently Court reassembled pursuant to recess, the County Attorney being present and the defendant present by counsel, comes now the panel herein into

Court and their names being called, all answered thereto; whereupon the respective parties having exercised their right to peremptory challenge, the following named persons are drawn according to law to constitute the jury herein, to-wit: J. B. Cobb, John G. Snedden, J. A. Pinyan, R. M. Coffee, Frank R. Weir, George Fellows, Charles Williams, W. A. Sawyer, Ed. Hill, W. W. Latham, Clarence Cook and Guy B. Hognason, who are duly sworn to try the issue joined between the State of Arizona, plaintiff and the defendant, Dominion Hotel, Incorporated, and thereupon the Clerk is ordered to read the information and state the plea of the defendant thereto, to-wit, "not guilty," which is the issue to be tried herein; and thereupon the counsel for the defendant moves the Court for a dismissal of the in-
7 formation herein, which motion is by the Court denied, and thereupon the defendant enters exception to such ruling; whereupon the plaintiff to maintain upon its part the issue herein called E. T. Stewart, who is first duly sworn then examined, and the plaintiff introduced in evidence pages 253 and 254 of a certain book containing the Articles of Incorporation of the Dominion Hotel Company, which pages are received and marked State's Exhibit 1 in Evidence, and thereupon it is ordered that such book may be removed from the files of this case upon filing a certified copy of the Articles of Incorporation; and thereupon the plaintiff called Agnes Selsas, Mrs. Helen Muor, who are first duly sworn and examined; and thereupon a certain frame containing a notice of "hours of work" is introduced by the plaintiff, and the same is received and marked State's Exhibit 2 in Evidence, and thereupon the witness is cross-examined, and thereupon the plaintiff rests. Whereupon the defendant to maintain upon its part the issue herein called Mrs. Helen Muor, who having been heretofore sworn is examined, and thereupon the defendant rests. Whereupon the defendant moves the Court to instruct the jury to return a verdict of acquittal for the defendant, on the ground that the evidence does not warrant a conviction, which motion to instruct is denied, and the defendant excepts to such ruling; where-
8 upon this being the usual hour of recess, the Court admonished the jury according to law and excused said jury until 1:30 o'clock P. M. of this day, to which time the trial is suspended.

Mr. Malott: The defendant likewise moves, if your Honor please, that the Court discharge the jury, for the reason that it appears that the facts charged do not constitute an offense punishable by law, in that the only facts charged are that the defendant employed Agnes Silka in its restaurant on the 28 day of February, 1914 for a period of seven and a half hours, which period was a period from seven until ten in the morning, from twelve noon until two P. M., and from six P. M. until 8:30 P. M., and that the Act under which this information is filed is void as being contrary to the XIV Amendment of the Constitution of the United States in that it imposes an arbitrary and capricious restraint upon the defendant's liberty to contract; and for the further reason that said Act makes an exception in the application of the law to a certain class of employers or female labor similarly situated with others of the same class; namely, of employers of female

labor in railroad restaurants, or eating houses located upon
9 railroad rights of way and operated by or under contract with any railroad company, and is therefore void as unjust and discriminatory legislation.

The Court: The motion is denied.

Mr. Malott: If your Honor will note the exception of the defendant.

The Court: Let the exception appear of record.

Title of Court and Cause.

Minutes of the Trial.

Be it remembered that heretofore and to-wit: On the 16th day of May, 1914, the same being one of the regular juridical days of said Court, the following order was made and entered in said Court, in said cause, which order is in figures and words as follows, to-wit:

Order for Arraignment.

239-A.

THE STATE OF ARIZONA

vs.

DOMINION HOTEL, INCORPORATED.

10 The County Attorney being present and Alderman and Elliott, Esqs., representing the defendant herein, it is ordered that the arraignment of the above entitled case be set for June 6, 1914.

Be it remembered that heretofore and to-wit: On the 12th day of June, 1914, the same being one of the regular juridical days of said Court, the following order was made and entered in said Court, in said cause, which order is in figures and words as follows, to-wit:

Order Sustaining Demurrer.

239-A.

THE STATE OF ARIZONA

vs.

DOMINION HOTEL, INCORPORATED.

The County Attorney being present and the defendant present by counsel, Alice M. Birdsel, Alderman and Elliott, said defendant presents to the Court its demurrer to the information herein, which is

argued and by the Court sustained; whereupon the County Attorney gives notice of appeal to the Supreme Court of the State of Arizona.

Be it remembered that heretofore and to-wit: On the 27th day of December, 1915, the same being one of the regular juridical days of said Court, the following order was made and entered in said Court, in said cause, which order is in figures and words as follows, to-wit:

11 *Order for Trial.*

239-A.

THE STATE OF ARIZONA

vs.

DOMINION HOTEL, INCORPORATED.

It is ordered that the above entitled case be and it is hereby set for trial on January 6th, 1916.

Be it remembered that heretofore and to-wit: On the 6th day of January, 1916, the same being one of the regular juridical days of said Court, the following order was made and entered, in said Court, in said cause, which order is in figures and words as follows, to-wit:

Order Granting Permission to File Amended Demurrer.

239-A.

THE STATE OF ARIZONA

vs.

DOMINION HOTEL, INCORPORATED.

Comes now the defendant and asks permission to file an amended demurrer in the above entitled case, which permission is granted and said amended demurrer is ordered filed.

Be it remembered that heretofore and to-wit: On the 7th day of January, 1916, the same being one of the regular juridical days of said Court, the following order was made and entered, in said Court, in said cause, which order is in figures and words as follows, to-wit:

Order to Enter Counsel.

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THE STATE OF ARIZONA

vs.

DOMINION HOTEL, INCORPORATED.

12 Upon motion it is ordered that J. R. Malott be entered as attorney for the defendant in the above entitled case.

Be it remembered that heretofore and to-wit: On the 7th day of January, 1916, the same being one of the regular juridical days of said Court, the following order was made and entered, in said Court, in said cause, which order is in figures and words, as follows, to-wit:

Trial.

239-A.

THE STATE OF ARIZONA

vs.

DOMINION HOTEL, INCORPORATED.

The County Attorney being present and the defendant present by counsel, the demurrer to the information is overruled, to which ruling the defendant excepts; whereupon the defendant by its attorney enters a plea of not guilty of the offense charged, and thereupon both parties announce ready for trial, and the Clerk is ordered to draw from the trial jury box the names of eighteen jurors, which is done; and thereupon the jurors so drawn are sworn on their voir dire, and thereupon the County Attorney made a statement to the jury and stated the nature of the case; and thereupon counsel proceeded to examine the jurors and J. W. Hogue is challenged by the plaintiff, which is allowed by the court, and said juror is excused and thereupon Sam Van Winkle is drawn and said juror is
13 sworn; the examination having been completed, and the jurors in the jury box having been passed for cause by both plaintiff and defendant, the respective parties are ordered to strike the jury list, and the panel is admonished by the Court and excused for twenty minutes, to which time the trial is suspended; and subsequently Court reassembled pursuant to recess, the County Attorney being present and the defendant present by counsel, comes now the panel herein into Court and their names being called, all answered thereto; whereupon the respective parties having exercised their right to peremptory challenge, the following named persons are drawn according to law to constitute the jury herein, to-wit: J. B. Cobb, John

G. Snedden, J. A. Pinyan, R. M. Coffee, Frank R. Weir, George Fellows, Charles Williams, W. A. Sawyer, Ed. Hill, W. W. Latham, Clarence Cook and Guy B. Hognason, who are duly sworn to try the issue joined between the State of Arizona, plaintiff and the defendant, Dominion Hotel, Incorporated, and thereupon the Clerk is ordered to read the information and state the plea of the defendant thereto, to-wit: "not guilty," which is the issue to be tried herein; and thereupon the counsel for the defendant moves the Court for a dismissal of the information herein, which motion is by the Court denied, and
14 thereupon the defendant enters exception to such ruling; whereupon the plaintiff to maintain upon its part the issue herein called E. T. Stewart, who is first duly sworn then examined, and the plaintiff introduced in evidence pages 253 and 254 of a certain book containing the Articles of Incorporation of the Dominion Hotel Company, which pages are received and marked State's Exhibit 1 in Evidence, and thereupon it is ordered that such book may be removed from the files of this case upon filing a certified copy of the Articles of Incorporation; and thereupon the plaintiff called Agnes Selsas and Mrs. Helen Muor, who are first duly sworn then examined; and thereupon a certain frame containing a notice of "hours of work" is introduced by the plaintiff, and the same is received and marked State's Exhibit 2 in Evidence, and thereupon the witness is cross-examined, and thereupon the plaintiff rests. Whereupon the defendant to maintain upon its part the issue herein called Mrs. Helen Muor, who having been heretofore sworn is examined, and thereupon the defendant rests. Whereupon the defendant moves the Court to instruct the jury to return a verdict of acquittal for the defendant, on the ground that the evidence does not warrant a conviction, which motion to instruct is denied, and the defendant excepts to such ruling; whereupon this being the usual hour of recess, the Court
15 admonished the jury according to law and excused said jury until 1:30 o'clock P. M. of this day, to which time the trial is suspended.

Be it remembered that heretofore and to-wit: On the 7th day of January, 1916, the same being one of the regular juridical days of said Court, the following order was made and entered, in said Court, in said cause, which order is in figures and words as follows, to-wit:

Trial Resumed.

239-A.

THE STATE OF ARIZONA

vs.

DOMINION HOTEL, INCORPORATED.

The County Attorney being present and the defendant present by counsel, comes now the jury herein into Court and their names being

called, all answer thereto, and thereupon the plaintiff asks permission to reopen the case for the purpose of proving the negative side of the statutes, which permission is granted, and thereupon A. Hansen is sworn and examined on behalf of the state, and thereupon both plaintiff and defendant rest. Whereupon counsel for the respective parties submit their case in argument to the jury, and the Court instructed the jury orally, the charge being taken down in shorthand by the official reporter in attendance upon this trial, and thereupon the case being now fully submitted the jury is ordered to retire in charge of their bailiffs, sworn for that purpose.

16 Be it remembered that therefore and to-wit: On the same day, the following order was made and entered, in said court, in said cause, which order is in figures and words, as follows, to-wit:

Order to Spread Verdict in Full Upon the Minutes.

230-A.

THE STATE OF ARIZONA

vs.

DOMINION HOTEL, INCORPORATED.

The County Attorney being present and the defendant present by counsel, comes now the jury herein into open Court in charge of their bailiffs, sworn for that purpose, and their names being called, all answered thereto; whereupon said jury is asked by the court if they have agreed upon a verdict and said jury replied that they have, and thereupon they returned their verdict to the Court, signed by the foreman thereof, and the Court announced the verdict and inquired if either side desired the jury polled, and neither side requesting the jury polled, the Clerk is ordered to spread said verdict in full upon the minutes, which is done as follows, to-wit:

"THE STATE OF ARIZONA, Plaintiff,

vs.

DOMINION HOTEL, Incorporated, Defendant.

We the jury duly empaneled and sworn in the above entitled action, upon our oaths do find the defendant guilty as charged in the information.

W. W. LATHAM,
Foreman."

17 By order of the Court, the clerk then read said verdict to the jury and inquired of them whether it is their verdict, and said jury replied that it is and so say they all, which is ordered

entered; whereupon the jury is ordered discharged from further consideration of this case, and it is ordered that judgment be passed upon the defendant herein on January 17, 1916.

Be it remembered that heretofore and to-wit: On the 17th day of January, 1916, the same being one of the regular juridical days of said Court, the following order was made and entered, in said Court, in said cause, which order is in figures and words as follows, to-wit:

Order Denying Motion in Arrest of Judgment (and Motion for New Trial).

239-A.

THE STATE OF ARIZONA

vs.

DOMINION HOTEL, Incorporated.

The County Attorney being present and the defendant present by counsel, the motion in arrest of judgment and motion for new trial is filed, and thereupon said motions are presented to the Court and denied.

Be it remembered that heretofore and to-wit: On the same day, the following order was made and entered, in said Court, in said cause, which order is in figures and words as follows, to-wit:

18 *Judgment.*

239-A.

THE STATE OF ARIZONA

vs.

DOMINION HOTEL, Incorporated.

The County Attorney, Norman J. Johnson, Esq., and the defendant present by counsel, Alderman and Elliott and J. R. Mabott, Esqs., and this being the hour for the sentence in this case, the Court says: "An information having been filed by the County Attorney of this County charging the Dominion Hotel with a misdemeanor. To this information a plea of not guilty was entered. On the 7th day of January, 1916, a fair and impartial trial was had in this Court before a jury, and said jury returned into open Court, their verdict finding the said Dominion Hotel guilty as charged in the information. Is there any legal cause to show why the judgment of this Court should not now be pronounced against the defendant, Dominion Hotel?" No legal cause being shown and none appearing to the Court, the Court doth render its judgment: "That

whereas the Dominion Hotel on the 7th day of January, 1916, after a fair and impartial trial in this Court, was found guilty of a misdemeanor, it is ordered, adjudged and decreed that the said Dominion Hotel, is guilty of a misdemeanor, and that it be punished therefor by the payment of a fine of $100.00".

19 PLAINTIFF'S EXHIBIT 2.

In Evidence.

(Framed.)

Employes' Working Hours.

Pantry and Dining Room.

From	7 A. M. to	10 A. M.	= 3	hours
"	12 P. M. to	2 P. M.	= 2	"
"	6 P. M. to	8:30 P. M.	= 2½	"
Side Work			½	"
Total Working Hours			8	"

A. HANSEN, *Mg'r.*

239-A. Filed Superior Court Jan. 7, 1916. J. W. W. Clk.
No. 407. Filed Supreme Court Mar. 24, 1916. C. F. Leonard, Clerk Supreme Court.

20 (Title of Court and Cause.)

Instructions Requested by Defendant.

I.

If you find from the evidence that Agnes Silka was employed upon the 28th day of February, 1914, in the restaurant or dining room of the Dominion Hotel by the defendant Dominion Hotel, Inc., and that a printed notice stating the hours of labor of the said Agnes Silka was posted in a conspicuous place in the room where the said Agnes Silka was employed, and that said hours of labor therein set forth did not exceed 8 hours, and if further find that the said Agnes Silka was not permitted on said date to work for the defendant at times not designated as a part of the working period in said posted notices, you are instructed to render a verdict of not guilty.

ALDERMAN AND ELLIOTT,
JAMES R. MALOTT,
Attorneys for Defendant.

(Endorsed: Filed Jan. 7-16, J. W. Wentworth, Clerk. Refused—G. W. Schute.)

Instructions of the Court.

The Court: Gentlemen, I think it only proper, in view of much that has been said in the course of the trial of this case, to
21 instruct you that you are not the judges of the law, that that is a matter which is left up entirely to the courts, and that it makes no difference to you in your deliberations upon this case as to whether you believe this to be a good law or a wise law or as to whether it may benefit or not benefit women or any others who may labor. The only question which will be left to you and which it is your duty as jurors in this case to adjudicate, is whether or not there has been a violation of it as will be hereinafter given you in these instructions.

In this case the Dominion Hotel Incorporated, the defendant in the case, is charged as follows: The Dominion Hotel, Incorporated, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Arizona, and the said corporation is, and heretofore has been, and was upon the twenty eighth day of February, A. D. 1914, engaged in the hotel business in Globe, Gila County, State of Arizona, and did then and there run and operate the Dominion Hotel; that said corporation did upon the twenty-eighth day of February, A. D. 1914, unlawfully permit one Agnes Silka, a female person, to be employed by it in said hotel and work eight hours, and that said eight hours of work was not then and there performed within a period of twelve hours, and the said Dominion Hotel, Incorporated, not being then and there engaged in the business of conducting a railroad restaurant or eating house located upon a railroad right of way, or operated by or under
22 contract with any railroad company, contrary to the form, force and effect of the statutes in such cases made and provided, and against the peace and dignity of the State of Arizona. The defendant is thus charged under our law with a violation of a statute regulating the employment of females in those places enumerated in that statute.

You are charged, gentlemen of the jury, that in the commission of any crime there must exist a union or joint operation of act and intent or act and criminal negligence. The intent is manifested by the circumstances connected with the offense and the sound mind and discretion of the accused. All persons are of sound mind who are not idiots, lunatics or affected with insanity. In this case the defendant is presumed to be of sound mind; the natural and probable consequence of every act intentionally done by a person of sound mind is presumed to have been intended by the author of the act.

You are further instructed that the defendant in a criminal case is presumed to be innocent until the contrary be proved, and in case of a reasonable doubt whether his guilt be satisfactorily shown he is entitled to be acquitted.

"Reasonable Doubt" is a term often used, probably pretty well understood, but not easily defined. It is not a mere probable doubt,

because everything relating to human affairs and depending on moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence leaves the minds of jurors in
23 that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge. The burden of proof is on the prosecutor; all of the presumptions of law, independent of the evidence, are in favor of innocence; and every person is presumed to be innocent until he is proven guilty. If upon such consideration there is a reasonable doubt remaining, the accused is entitled to the benefit of it by acquit-al, for it is not sufficient to establish a probable though a strong one arising from the train of chances that the fact charged is more likely to be true than the contrary, but the evidence must establish the proof of the fact to a reasonable and moral certainty; a certainty that convinces and directs the understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it. Such proof we take to be proof beyond a reasonable doubt.

You, gentlemen of the jury, are made by the law the sole judges of the facts in this case, and of the credibility of each and all of the witnesses who have testified in the case, and of the weight you will give to the testimony of the several witnesses who have appeared before you. In determining the credibility of any witness and the weight you will give to his testimony you have the right to take into consideration his manner and appearances while giving his testimony, his means of knowledge, any interest or motive which he may have if shown, the effect if any of your verdict upon him,
24 and the probability or improbability of the truth of his statements when considered in connection with the other evidence in the case. If you believe that any witness has wilfully sworn falsely to any material fact in the case then you have the right to wholly disregard the testimony of such witness except in so far as his statements may be corroborated by other credible evidence in the case.

As I have heretofore instructed you, the defendant in this case is charged with a violation of the statute regulating the employment of women in certain occupations. In this state no female shall be employed or be permitted to work in any hotel in this state more than eight hours during any one day or more than fifty-six hours during any one week; provided that at least one hour for meals be allowed each female during her working period, but no part of such hour for meals shall be included as a part of the permitted working period. Thus, if you believe, gentlemen of the jury, from the evidence that has been introduced here, beyond a reasonable doubt, that the defendant, the Dominion Hotel, Incorporated, employed girls in the hotel in this county and state for a period of seven and one-half hours, and that such seven and one-half hours extended beyond the twelve hour period, it should be your duty to return a verdict of guilty against the defendant. If, on the other hand, gentlemen of the jury, you have a reasonable doubt of the truth and proof of any

material allegation of the information, it is your duty to re-
25 turn a verdict of acquit-al in favor of the defendant.

I have caused to be prepared for your consideration two forms of verdict. One, we the jury duly empaneled and sworn in the above entitled action, upon our oaths do find the defendant not guilty. Two, we the jury duly empaneled and sworn in the above entitled action, upon our oaths do find the defendant guilty as charged in the information.

When you have retired to your jury room you will select from among your number a foreman and proceed to a consideration of the case, and when you have agreed upon a verdict cause him to sign that form of verdict which represents your conclusion and return it into open court. Your verdict must be unanimous, and in all your deliberations resolve every reasonable doubt in favor of the defendant.

You are further instructed, gentlemen, that if you believe beyond a reasonable doubt that Agnes Silka was employed by the Dominion Hotel, a corporation, and that the period of work performed by her on or about the 28th day of February, 1914, was performed in a period of time that exceeded twelve hours, you should find the defendant guilty.

You are instructed, gentlemen of the jury, that if you believe beyond a reasonable doubt that the person named in the complaint
filed herein, to-wit, Agnes Silka, worked a period of eight
26 hours and that that period of eight hours was worked in a
period of time that exceeded twelve hours, then as a matter of law I instruct you that you should find the defendant guilty.

27 In the Superior Court of Gila County, State of Arizona.

No. 239-A.

STATE OF ARIZONA, Plaintiff,

versus

DOMINION HOTEL, INC., Defendant.

Certificate of Evidence.

Before the Hon. G. W. Shute, Judge of said Court, and a Jury.

GLOBE, ARIZONA, January 7, 1916.

Reporter's Transcript.

Appearances:

For the State: Norman J. Johnson, Esq., County Attorney, and C. C. Faires, Esq., Assistant County Attorney.

For the Defendant: Alderman and Elliott, Esqs., and James R. Malott, Esq.

Be it remembered, that on January 7, 1916, the above entitled cause came duly on for trial in the above entitled court. There were present:

Hon. G. W. Shute, Judge of said court, and a jury.

The Plaintiff appeared by Mr. Norman J. Johnson, County Attorney, and Mr. C. C. Faires, Assistant County Attorney.

The Defendant appeared by Messrs. Alderman & Elliott and Mr. James R. Malott, its attorneys.

28 And thereupon, both sides having announced ready to proceed, the following proceedings were had and things done in said cause:

NOTE.—(The Clerk having been instructed by the Court to call eighteen jurors into the box proceeded to call said jurors, whereupon Mr. James R. Malott, attorney for defendant, asked that the Court rule on the demurrer heretofore filed herein, and which said panel having been duly called and sworn on voir dire the following order was entered by order of the Court.)

The Court: Let the record show now the ruling upon the demurrer before the calling of the jury, and that the demurrer was overruled.

NOTE.—(Whereupon Mr. James R. Malott, counsel for defendant, duly excepted to the ruling of the Court. And thereupon a plea of not guilty was entered on the part of the defendant and the Court ordered that the trial proceed.)

Mr. Johnson: Gentlemen of the jury, the defendant, the Dominion Hotel, incorporated, is charged with the crime of having, on or

about the twenty-eighth day of February, 1914, been engaged in the hotel business in Globe, Gila County, State of Arizona, and was then and there operating what is commonly known as the Dominion Hotel; that the Dominion Hotel, incorporated, did on or about the 28 day of February, 1914, employ and permit one Agnes Silka, a female person, to be employed by it in said hotel and work for a period of eight hours, and that said period of eight hours of work was not then and there performed within a period of twelve hours, and the said Dominion Hotel, inc., not being then and there engaged in the business of conducting a railroad restaurant or eating house located upon a railroad right-of-way, or operated by or under contract with any railroad company, contrary to the form of the statutes in such cases made and provided.

NOTE.—(Thereupon the panel having been duly examined on voir dire and passed by respective counsel a recess of twenty minutes was taken for the purpose of permitting counsel to strike the jury list. Panel duly admonished and excused for twenty minutes. And after recess the panel having been called and all being present the jury was duly selected and sworn to try the case. And thereupon the Court instructed the Clerk to read the information and state the plea to the jury, which was done, whereupon the Court instructed counsel to proceed with the trial of the cause.)

And thereupon, counsel for the State introduced the following testimony in support of the allegations of the complaint:

Mr. E. T. STEWART, called as a witness on behalf of the State, and being first duly sworn, was examined and testified as follows:

29 Direct examination by Mr. Johnson:

Mr. Malott: The defendant objects to the admission of any testimony in this case, for the reason that the offense charged does not constitute a public offense under the laws of the State of Arizona, or at all, for the reason that the Act under which this information is filed is contrary to the XIV Amendment of the Constitution of the United States of America.

The Court: The objection is overruled.

Mr. Malott: Will your Honor have our exception noted on the minutes in order that the record may show all of it.

The Court: It may show the exception.

Q. Your name is E. T. Stewart? Ed. Stewart?

A. Yes, sir.

Q. You are the County Recorder of Gila County, State of Arizona?

A. Yes, sir.

Q. How long have you been County Recorder?

A. About nine years.

Q. I will show you this book marked "Corporations, and Wills Admitted to Probate, Gila County", and I will ask you what, if anything, that book represents, and if that book is of record in the Recorder's office of Gila County, State of Arizona?

A. Yes, sir, this is one of the records of that office.

Q. And what is kept of record in that book? Articles of Incorporation?

A. Articles of Incorporation are recorded in that book. I don't remember of ever having recorded anything else in it.

Q. I will refer you to page 253 of book 1 of Corporations and Wills Admitted to Probate, and ask you what, if anything, appears upon that page?

A. The Articles of Incorporation of the Dominion Hotel, Incorporated, commence upon that page.

Q. And upon what page do they end?

A. Upon page 254.

Q. Now, when were the Articles of Incorporation filed with you to be recorded?

A. They were not filed with me.

Q. Who were they filed with?

A. The notation at the foot of the record——

Mr. Alderman: That is objected to as hearsay.

Mr. Johnson: It is a part of the record he is reading from.

The Court: He may answer.

Mr. Alderman: Why not stipulate these facts are so?

Q. What is it?

A. Notation at the foot of the record shows that they were filed on the tenth day of October, 1905, at 12:00 o'clock M.

30 Mr. Johnson: Now, that is all. We offer this book in evidence, and I ask permission of the Court to withdraw the same and file a certified copy of the Articles of Incorporation.

The Court: You hardly mean the book.

Mr. Johnson: We offer the page of that book, 239 I think—Page 253 and page 254 of Book 1, Corporations and Wills Admitted to Probate, of the Recorder's office of Gila County, State of Arizona, and ask permission——

The Court: You may let those papers of that book be received in evidence and marked State's exhibit 1 in evidence. Let an order appear at this time granting permission to withdraw the offer upon leaving with the Clerk a certified copy of those two pages in the book and title wherein they appear of record.

Mr. Alderman: Now, if the Court please, it may be stipulated, and the stipulation may be entered in the record, that the Dominion Hotel Company is a corporation, and was at all times involved in this matter.

Mr. Johnson: May that stipulation appear of record?

The Court: It undoubtedly does.

Mr. Johnson: That is all.

Miss AGNES SILKA, called as a witness on behalf of the State, and being first duly sworn, was examined and testified as follows:

Direct examination by Mr. Johnson:

Q. What is your name?

A. Agnes Silka.

Q. Now, Miss Silka, I will direct your attention to on or about the 28 or the 28 day of February, A. D. 1914, and ask you whether or not at that time you were employed by the Dominion Hotel, Incorporated, in this city, county and State?

A. February what?

Q. 1914.

A. I was.

Q. You were. Now, in what capacity were you employed?

A. How?

Q. In what capacity; what did you do?

A. Dining room.

Q. What did you do in the dining room; what kind of work?

A. I served people with meals.

Q. And were you known as a waitress?

A. Yes, sir.

Q. Now, who else, if any one, worked in the dining room with you at that time?

A. Miss Helen Gardiner and Ida Tesmer.

Q. Do you know where Miss Helen Gardiner is now?

A. Yes, sir.

Q. She is in this city and State?

A. Yes, sir.

31 Q. Do you know where Miss Ida Tesmer is?

A. She is dead.

Q. She is dead? Now, on the 28 day of February, Nineteen Hundred—Withdraw that part of the question. I will show you this notice that is framed and ask you whether or not you ever saw that in the Dominion Hotel, the dining room, during the month of February and before the 28 day of February, 1914?

A. Well, I have, I am almost sure.

Q. You have seen that?

A. I have seen a notice in there very much the same.

Q. You saw one in there very much the same. This looks the same as what you saw?

A. That looks just the same.

Q. Now, can you identify that as being the notice that was there at that time?

A. I couldn't answer that.

Q. You couldn't identify it as being the notice that was there at that time?

A. No.

Q. Now, upon the 28 day of February, 1914, at what time did you start to work?

A. I don't know, I began work at seven or 7:30, I couldn't tell you that.

Q. Well now, if you commenced work at seven o'clock, how long did you work?

A. Until ten.

Q. Until ten? Then when did you start to work again?

A. At twelve.

Q. And how long did you work?
A. Until two.
Q. Two, and then when did you start to work again?
A. At six.
Q. And when did you cease work?
A. 8:30.
Q. Now, you started at seven o'clock in the morning?
A. In the morning.
Q. And you worked until ten the same morning?
A. Yes, sir.
Q. Then you started at twelve and worked until two the same day, and from six to 8:30 of the same day?
A. Yes, sir.
Q. Now, the seven o'clock when you started to work, was the morning of that same day as the 8:30 o'clock when you ceased work, is that correct?
A. Yes, sir.
Q. Now, Miss Silka, if you started to work at 7:30 what hours did you work?
A. I worked until ten and from twelve until two, and from six until, well, perhaps nine, if the train was late.
Q. If the train was late?
A. But the doors always closed at 8:30.
Q. These were the hours if you started at 7:30 in the morning?
A. Yes, sir.
Q. You worked from ten and from twelve until two and from six until 8:30 or nine when the train was late?
32 A. Yes, sir.
Q. And these hours you have mentioned were all in the same day?
A. Yes, sir.
Q. So when you started to work at 7:30 it was morning of the day that you quit at 8:30 or nine o'clock, is that correct?
A. Yes, sir.
Q. You say your name is Miss Agnes Silka?
A. Yes, sir.
Mr. Johnson: That is all.

Cross-examination by Mr. Malott:

Q. Miss Silka, you say you were employed in the dining room of the Dominion Hotel?
A. Yes, sir.
Q. And did you do any other work in the hotel other than as waitress in the dining room?
A. No, sir.
Q. The Dominion Hotel is how far from the passenger depot of the Arizona Eastern Railroad, Miss Silka?

Mr. Johnson: I object to that question on the ground it is immaterial.

Q. Was it on that date?

The Court: The objection is sustained.

Mr. Malott: If the Court please, may I be heard on that?

The Court: Yes.

Mr. Malott: As we under-tand it, in a plea of not guilty we may set forth any facts which go to show—or we may put in the defense that the complaint does not state facts which show a publiz offense. And in this ease we submit that under the ruling of Justice Cunningham in the State — case of the State versus the Dominion Hotel, we are given the same defense that a railroad restaurant would have. We are also permitted, if your Honor please, to show that the offense created by the statute is permitting a female to work at times not designated as a part of the working period, to show that the only offense is that the employees were permitted to work at hours not included in the printed statement. Under this decision, the relevancy of this particular witness and this particular evidence, is to show that we stand in the same situation as a railroad restaurant or an eating house operated by a railroad; that we are located by the Arizona Eastern Railroad; that we cater to the same class of guests that railroad eating houses cater to; that the persons come to this hotel and are sent away in order to catch and leave on the trains as they come in and out of this town.

The Court: The objection is sustained.

33 Mr. Malott: Will your Honor authorize or direct the Clerk to enter our exception in the minutes?

The Court: Let the exception appear of record.

Q. On this 28 day of February, Miss Silka, you worked a total period of seven and one-half hours did you not?

A. I think I did.

Q. And you worked merely during the hours that appeared on the posted notice of your hours of work in the dining room?

A. As far as I can remember that is all I ever worked.

Q. Now, from ten until twelve of that day, of the 28 of February, were you on duty at the hotel?

A. No, sir.

Q. Whose time was that from ten o'clock?

A. That was mine.

Q. Then from two in the afternoon until six o'clock in the evening did you work for the Dominion Hotel?

A. No, sir.

Q. Whose time was that?

A. That was mine.

Q. And from 8:30 in the evening until seven o'clock or 7:30 the next morning did you work at any time for the Dominion Hotel?

A. No, sir.

Q. That was your own time likewise?

A. Yes, sir.

Q. How long have you been engaged in the hotel work or as waitress?

A. About nine years.

Q. What are the usual and ordinary hours of mealtimes at hotels?

Mr. Johnson: I object to that question on the ground it is immaterial and not proper cross-examination.

The Court: Read the question, Mr. Reporter.

(Question read to the Court.)

The Court: Do you desire to make your offer?

Mr. Malott: We offer to show the ordinary hotel hours, mealtimes in hotels, cover a period of time included in, ordinarily in thirteen and a half hours; that they can not be reduced to a period of twelve hours, and that in so far as this Act attempts to limit the employment of women to eight hours during a space of twelve hours it is an arbitrary and capricious limitation of the rights of women to labor and of the right of this defendant to contract with women.

The Court: You may let the objection be sustained.

Mr. Malott: And your Honor will note our exception.

The Court: Let the exception appear of record.

Q. Do the——What is the nature of your work as a waitress in the hotel and what was the nature of your work as a waitress in the hotel of the Dominion Hotel, Incorporated, on the 28 day of February, 1914, Miss, Silka?

A. You mean what I did?

Q. Yes.

A. Served people with meals I suppose.

Q. Was the work particularly difficult?

34 A. No, sir.

Mr. Johnson: I object to that on the ground it is immaterial.

The Court: The answer may stand.

Q. Was that—Will you state how that work compared with ordinary housework that you would do in a home?

Mr. Johnson: I object to that question on the ground it is immaterial and not proper cross-examination.

Mr. Malott: As to the fact that it is not proper cross-examination, if your Honor please, we submit that under the rule in the case of Rush vs. French, and as to the fact that it is immaterial we submit it upon the same argument that we have already presented.

The Court: Let the objection be sustained.

The Court: Do you desire an exception noted to the ruling?

Mr. Malott: If your Honor will note our exception to the ruling.

The Court: Very well. Let the record show the exception.

Q. Miss Silka, did you make any complaint against the Dominion Hotel for—because of your hours of labor?

Mr. Johnson: I object to that question on the ground it is immaterial.

The Court: The objection is sustained.

Q. Have you appeared here as a voluntary witness, Miss Silka, against the Dominion Hotel?

A. No, sir.

Mr. Johnson: I object for the same reason.
The Court: The objection is overruled.

Q. What is it?

Mr. Johnson: I withdraw that objection.

Q. I didn't get the answer?
A. No, sir.
Q. You were subpoenaed by the State in this case weren't you?
A. I was.
Q. You are not at present employed by Mr. Hansen of the Dominion Hotel are you?

Mr. Johnson: I object to that on the ground it is immaterial.
The Court: The objection is overruled.

Q. (Question read.)
A. I am not.
Q. Are you at the present time employed as a waitress at any other place?

35 Mr. Johnson: I object to that on the ground it is immaterial.
The Court: The objection is sustained.
Mr. Malott: That is all of this witness, your Honor.

Redirect examination by Mr. Johnson:

Q. Now, all of the facts you have testified to, Miss Silka, in this case, happened in Gila County, State of Arizona, did they not?
A. Yes, sir.

Mr. Johnson: That is all.

Mrs. Helen Gardiner Mauer, called as a witness on behalf of the State, and being first duly sworn, was examined and testified as follows:

Direct examination by Mr. Johnson:

Q. What is your name?
A. My name is Mrs. Helen Gardiner Mauer.
Q. You say your name is Mrs. Mauer now?
A. Mauer.
Q. And what was your name on the 28 day of February, 1914?
A. Helen Gardiner.
Q. I will direct your attention, Mrs. Mauer, to that date, and ask you whether or not you were employed by the Dominion Hotel, Incorporated?
A. I was, yes, sir.
Q. At that time was there in the employment of that corporation working with you, Ida Tesmer and Miss Agnes Silka?
A. There was.
Q. Do you know where Ida Tesmer is now?

A. She has since died.
Q. She is dead?
A. Yes, sir.
Q. I will show you this little frame and the card contained therein and ask you if you know where that came from?
A. I do, yes, sir.
Q. Where did it come from?
A. It came from—it was hanging on the door in the dining room.
Q. — of the——
A. Dominion Hotel.
Q. Dominion Hotel, the defendant in this case?
A. Yes, sir.

Q. I will ask you if you recognize that as being the card
36 and frame that was in the dining room of the Dominion Hotel, incorporated?

A. I do, yes, sir.
Q. On February 28, 1914?
A. Yes, sir.

Mr. Johnson: We now offer this in evidence as State's exhibit two.
Mr. Malott: No objection.
Mr. Johnson: We offer this in evidence as State's exhibit 2.
The Court: No objection? Let it be received in evidence and marked State's exhibit 2.
NOTE.—(Mr. Johnson reads State's exhibit 2 in evidence to the jury.)

Q. Now, upon the 28 day of February, 1914, do you know whether or not Miss Agnes Silka was working at the Dominion Hotel in the dining room?
A. She was.
Q. And do you know what hours she started to work that morning?
A. Seven o'clock, I guess.
Q. What hour was it?
A. Seven o'clock in the morning.
Q. And how long did she work continuously until she ceased?
A. Till ten o'clock.
Q. And then when did she commence work again?
A. Twelve.
Q. And how long did she work then?
A. Until two.
Q. Then when did she start work again?
A. Six o'clock in the evening.
Q. Then when did she cease work?
A. 8:30.
Q. Now, the period of time, seven o'clock in the morning, and the period of time when she ceased work, 8:30 in the afternoon or evening, was on the same day?
A. Yes, sir.

Q. This period of work was continuous from seven o'clock until 8:30, excepting the periods of time as stated by you?
A. Yes.
Q. In other words, she worked from 7:00 A. M. until 10:00 A. M.?
A. Yes, sir.
Q. And from twelve noon to 2:00 P. M.?
A. Yes, sir.
Q. And from 5:30 P. M. until 8:00 P. M.? 5:30——?
A. 8:30 isn't it? Not 5:00, 6:00 until 8:30.
Q. Five or six until 8:30?
A. Why, yes.
Q. Yes, 6:00 to 8:30 P. M. That was all upon the same day?
A. Yes, sir, it was.
Q. These facts that you have testified to Mrs. Mauer, happened in this County and State?
A. They did.
Q. In Gila County, State of Arizona?
37 A. Yes, sir.

Mr. Johnson: That is all.

Cross-examination by Mr. Mabott:

Q. Mrs. Mauer, on the 28 of February, 1914, Miss Tesmer, or Miss Silka, didn't work more than eight hours did she?
A. No, she didn't.
Q. Was any part of that eight hours given to her for her meals?
A. Yes, it was.
Q. How many meals was she permitted to eat out of the eight hours she was on duty?

Mr. Johnson: I object to that on the ground it is immaterial and not proper cross-examination.
Mr. Mabott: If the Court please, it may develop, though I won't vouch for it, that part of this time, part of this thirteen and a half hours was devoted to mealtimes and not to employment. It may reduce the period of employment to within twelve hours.
The Court: The objection is sustained.

Q. How long, if you know, did Miss Silka actually work for the Dominion Hotel on that date?

Mr. Johnson: I object to that on the ground it is immaterial.
The Court: The objection is overruled.

A. Eight hours.
Q. What was the nature of Miss Silka's work?
A. Serving meals.
Q. Serving meals?
A. Yes, sir.
Q. How many meals did she serve?
A. Three.

Q. Three a day?

A. Three a day. Well, she served them three times a day; I don't know just how many she served.

Q. I see. She served for breakfast, lunch and dinner?

A. Yes, sir.

Q. And between those mealtimes she was not on duty?

A. No.

Q. At the Dominion Hotel?

A. No.

Q. And what were those mealtimes, what hours?

A. From seven in the morning until ten; from twelve until two; and from six until 8:30.

Q. Do you know whether or not those are the ordinary mealtimes in hotels?

38 A. Just about the same I believe, I am not sure.

Q. How long have you been engaged in hotel work, Mrs. Mauer?

A. Five years. Six years, I believe.

Q. Six years? And what general class of customers do they have in the hotel dining room, or did they have on the 28 day of February, 1911?

Mr. Johnson: I object to that question on the ground it is immaterial.

The Court: The objection is sustained.

Mr. Malott: Your Honor will note the defendant's exception, please.

The Court: Let the exception appear of record.

Q. Will you state whether or not, Mrs. Mauer, it is possible to accomodate the guests of the hotel in the dining room within a period of twelve hours?

Mr. Johnson: I object to that question on the ground it is immaterial and is not proper cross-examination.

The Court: She may answer.

A. No, it is not.

Mr. Johnson: We move to strike the answer out and ask leave to argue it. It constitutes no defense; it is immaterial.

The Court: It is simply offered to make the record clear upon the offers heretofore made.

Mr. Johnson: I see. Very well.

Q. Then, if waitresses are not permitted to work longer than eight hours during the twelve hour period they will be driven from the work of waiting table in hotels will they?

A. They will, yes, sir.

Mr. Johnson: I object to that on the ground it is immaterial and is not proper cross-examination.

The Court: It is not proper cross-examination. The objection is sustained.

Mr. Malott: That is all.

Mr. Johnson: The State rests.

Mr. Malott: The defendant calls Mrs. Mauer as its first witness.

Mr. Johnson: Just a moment, if your Honor please? In this action there are allegations to the effect that this is not a railroad restaurant or eating house located upon a railroad right-of-way or owned or operated by a railroad company. Now, there are some cases—In the minority of cases I have found that some proof ought to be offered by us in that respect, others that it is a matter of defense for the defendant to prove.

The Court: It is a matter of defense.

Mr. Johnson: You hold it is a matter of defense. The state rests.

39 And thereupon the Defendant introduced the following testimony on its behalf:

Mrs. Helen Gardiner Mauer, called as a witness on behalf of the Defendant, and having been previously sworn in the case, was examined further and testified as follows:

Direct examination by Mr. Malott:

Q. You stated as a witness for the State, Mrs. Mauer, that it was impossible for a hotel serving the class of trade that it does in its dining room to close its dining room at the end of twelve hours?

A. Yes.

Q. In that case it would be impossible for a female to stay on duty during the time that a hotel dining room must be open to accommodate its guests would it?

Mr. Johnson: I object to that on the ground it is calling for the conclusion of the witness and is immaterial.

The Court: Read the previous question and answer, Mr. Reporter.

(Previous question and answer read to the Court.)

The Court: The objection is overruled.

Mr. Johnson: If your Honor please, may I have your Honor's ruling vacated?

The Court: Yes.

Mr. Johnson: Now, as I understand this evidence is being admitted simply for the purpose of aiding the defendant to make a record. Now, under no theory or aspect of this case, according to the decision handed down by Judge Cunningham, could that question, which purely calls for the conclusion of this witness, be relevant or material in this case. If this evidence is not proper it should not be permitted to go before this jury to aid the defendant to make its case if they want to appeal this case. Your Honor can rule against the introduction of any such testimony and they can make the record for themselves. In other words, we do not want to do anything that will hinder the defendant from——

The Court: I think your objection that it calls for the conclusion——

Mr. Johnson: And further I object on the ground it is immaterial.
The Court: The objection that it is immaterial is sustained.

Q. Would it be possible for you as a waitress——

Mr. Malott: Will your Honor note our exception to the ruling?
The Court: Let the exception appear of record.

40 Q. Would it be possible for you as a waitress to serve three meals in a hotel dining room at the ordinary and customary meal-times within a period of twelve hours?

Mr. Johnson: I object to that on the ground it is immaterial and is calling for the conclusion of the witness.
The Court: The objection is sustained.
Mr. Malott: Note our exception, Mr. Clerk.
The Court: Let the exception appear of record.

Q. You have these rest periods between your hours of work as waitress do you not, Mrs. Mauer?
A. I do, yes, sir.
Q. And that time is your own from ten until twelve and from nine until six and from 8:30 on?
A. It is, yes.
Q. Does it make your work more difficult or easier?

Mr. Johnson: I object to that question on the ground it is immaterial.
The Court: The objection is sustained.
Mr. Malott: Will the Court note our exception?
The Court: Let the exception appear of record.

Q. Do you know whether or not the Dominion Hotel is located upon a railroad right-of-way?
A. I do not.
Q. Do you know whether or not the Dominion Hotel is operated by any railroad company?
A. I don't know that either.
Q. Do you know whether or not the Dominion Hotel is operated under a contract with any railroad company?
A. I don't know.
Q. Would you say that—do you know whether or not the Dominion Hotel dining room is a railroad restaurant?
Mr. Johnson: Of your own knowledge, do you know?
A. We cater to the railroad people. I don't know whether it is a railroad dining room or not.
Q. In other words, you mean what by "catering to railroad people"?
A. Well, we feed people coming in on the train and going out on the train.
Q. That is the train that goes out in the morning?
A. In the morning and comes in in the evening.
Q. At what time does that, or did that train come in in the evening on the 28 of February?

A. I believe——

Mr. Johnson: I object to that on the ground it is immaterial.

Mr. Malott: If your Honor please, it seems this question of what a railroad restaurant is is not particularly defined. I do not think that that necessarily goes just to a railroad depot or a station
41 restaurant. We offer to show that this dining room or restaurant is located near the railroad; that it caters to the guests who come into our town on the railroad; that it is open at these hours for their convenience.

The Court: The objection is sustained.

Mr. Malott: Will the Court please note our exception?

The Court: Let the exception appear of record.

Mr. Malott: That is all. Just another question!

Q. Are you still employed in the Dominion Hotel?

A. I am.

Mr. Malott: That is all.

Mr. Johnson: That is all.

Mr. Malott: The defendant rests.

Mr. Malott: If the Court please, the defendant moves the Court that it direct the jury to acquit the defendant in this case for the reason that the evidence offered is not sufficient to warrant a conviction. This is offered under the ruling of Justice Cunningham in the case we referred to in the case of the State against Dominion Hotel in which he states that "The offense created by statute is permitting a female employe to work at times not designated as a part of the working period". There is no such evidence in this record that Miss Silka worked at any time that was not designated in the posted notice as her hours of work. And for the further reason that Justice Cunningham states: "The fact essential to a conviction must be established that the female employed was permitted to work at a time other than the working time specified in the notice." Your Honor undoubtedly realizes that the effect and the wording of that decision is complicated to say the least, and it is hard to reconcile the arguments and the statements that are made, together with the effect of the ruling, unless we give the benefit of the doubt and believe that Justice Cunningham was of the idea that the offense charged was that these girls worked at hours not posted in the notice or that no notice was posted.

(Colloquy between Court and counsel.)

The Court: Well, the matter is here upon a motion to instruct. The motion to instruct is denied.

Mr. Malott: Will your Honor note our exception to the ruling?

The Court: Let the exception appear of record.

Mr. Malott: The defendant likewise moves, if your Honor please, that the Court discharge the jury, for the reason that it appears that the facts charged do not constitute an offense punishable by law, in that the only facts charged are that the defendant employed Agnes

Silka in its restaurant on the 28 day of February, 1914, for a period of seven and a half hours, which period was a period from seven until ten in the morning, from twelve noon until two P. M., and from six P. M. until 8:30 P. M., and that the Act under which this information is filed is void as being contrary to the XIV Amendment of the Constitution of the United States in that it imposes an arbitrary and capricious restraint upon the defendant's liberty to contract; and for the further reason that said Act makes an exception in the application of the law to a certain class of em-
42 ployers or female labor similarly situated with others of the same class; namely, of employers of female labor in railroad restaurants, or eating houses located upon railroad rights of way and operated by or under contract with any railroad company, and is therefore void as unjust and discriminatory legislation.

The Court: The motion is denied.

Mr. Malott: If your Honor will note the exception of the defendant.

The Court: Let the exception appear of record.

The Court: Proceed with the argument.

Note: (It being the noon hour the jury is admonished and recess taken until 1:30 P. M. before argument.)

(1:30 P. M. After noon recess. Jury called; all present.)

The Court: Proceed.

Mr. Johnson: Because of the fact the State feels it should introduce some evidence to prove negative situation in accordance with the statutory provision, we at this time ask permission to reopen our case.

The Court: Very well, you can do it for that purpose alone.

And thereupon the State introduced the following testimony:

Mr. A. HANSEN, called as a witness on behalf of the State, and being first duly sworn, was examined and testified as follows:

Direct examination by Mr. Johnson:

Q. Your name is A. Hansen? What is your name?

A. A. Hansen.

Q. A. Hansen. You are the proprietor of the Dominion Hotel?

A. No, manager.

Q. Manager. Were you such manager upon February 28, 1914?

A. I was, yes, sir.

Q. Now, as such manager of the Dominion Hotel, do you know whether or not the Dominion Hotel is a railroad restaurant or eating house located upon a railroad right of way and operated by or under contract with any railroad company?

A. It is not.

Q. It is not? By that you mean the Dominion Hotel, Incorporated, which operates the Dominion Hotel is not connected in any way with a railroad restaurant or eating house located upon a rail-

road right of way and operated by or under contract with any railroad company?

A. It is not.

Mr. Johnson: That is all.

Mr. Malott: No questions.

The Court: Let the record show both sides rest.

The Court: Proceed.

(After the argument the Court charged the jury as follows:)

43 The Court: Gentlemen, I think it only proper, in view of much that has been said in the course of the trial of this case, to instruct you that you are not the judges of the law, that that is a matter which is left up entirely to the Courts, and that it makes no difference to you in your deliberations upon this case as to whether you believe this to be a good law or a wise law or as to whether it may benefit or not benefit women or any others who may labor. The only question which will be left to you and which it is your duty as jurors in this case to adjudicate, is whether or not there has been a violation of it as will be hereinafter given you in these instructions.

In this case the Dominion Hotel, Incorporated, the defendant in the case, is charged as follows: The Dominion Hotel, Incorporated, is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Arizona, and the said corporation is, and heretofore has been, and was upon the twenty-eighth day of February, A. D. 1914, engaged in the hotel business in Globe, Gila County, State of Arizona, and did then and there run and operate the Dominion Hotel; that said corporation did upon the twenty-eighth day of February, A. D. 1914, unlawfully permit one Agnes Silka, a female person, to be employed by it in said hotel and work eight hours, and that said eight hours of work was not then and there performed within a period of twelve hours, and the said Dominion Hotel, Incorporated, not being then and there engaged in the business of conducting a railroad restaurant or eating house located upon a railroad right of way, or operated by or under contract with any railroad company, contrary to the form, force and effect of the statutes in such cases made and provided, and against the peace and dignity of the State of Arizona. The defendant is thus charged under our law with a violation of a statute regulating the employment of females in those places enumerated in that statute.

You are charged, gentlemen of the jury, that in the commission of any crime there must exist a union or joint operation of act and intent or act and criminal negligence. The intent is manifested by the circumstances connected with the offense and the sound mind and discretion of the accused. All persons are of sound mind who are not idiots, lunatics or affected with insanity. In this case the defendant is presumed to be of sound mind; the natural and probable consequence of every act intentionally done by a person of sound mind is presumed to have been intended by the author of the act.

You are further instructed that the defendant in a criminal case is presumed to be innocent until the contrary be proved, and in case of a reasonable doubt whether his guilt be satisfactorily shown he is entitled to be acquitted.

"Reasonable Doubt" is a term often used, probably pretty well understood, but not easily defined. It is not a mere probable doubt, because everything relating to human affairs and depending on moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and
44 consideration of all the evidence leaves the minds of jurors in that condition that they can not say they feel an abiding conviction to a moral certainty of the truth of the charge. The burden of proof is on the prosecutor; all of the presumptions of law, independent of the evidence, are in favor of innocence; and every person is presumed to be innocent until he is proven guilty. If upon such consideration there is a reasonable doubt remaining, the accused is entitled to the benefit of it by acquittal, for it is not sufficient to establish a probable though a strong one arising from the train of chances that the fact charged is more likely to be true than the contrary, but the evidence must establish the proof of the fact to a reasonable and moral certainty: a certainty that convinces and directs the understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it. Such proof we take to be proof beyond a reasonable doubt.

You, gentlemen of the jury, are made by the law the sole judges of the facts in this case, and of the credibility of each and all of the witnesses who have testified in the case, and of the weight you will give to the testimony of the several witnesses who have appeared before you. In determining the credibility of any witness and the weight you will give to his testimony you have the right to take into consideration his manner and appearances while giving his testimony, his means of knowledge, any interest or motive which he may have if shown, the effect if any of your verdict upon him, and the probability or improbability of the truth of his statements when considered in connection with the other evidence in the case. If you believe that any witness has wilfully sworn falsely to any material fact in the case then you have the right to wholly disregard the testimony of such witness except in so far as his statements may be corroborated by other credible evidence in the case.

As I have heretofore instructed you, the defendant in this case is charged with a violation of the statute regulating the employment of women in certain occupations. In this State no female shall be employed or be permitted to work in any hotel in this State more than eight hours during any one day or more than fifty-six hours during any one week, and no part——

The Court: Strike that "no part" out. (Continuing:) —provided, that at least one hour for meals be allowed each female during her working period, but no part of such hour for meals shall be included as a part of the permitted working period. Thus, if you believe, gentlemen of the jury, from the evidence that has been introduced here, beyond a reasonable doubt, that the defendant, the Dominion

Hotel, Incorporated, employed girls in the hotel in this county and State for a period of seven and one-half hours, and that such seven and one-half hours extended beyond the twelve-hour period, it should be your duty to return a verdict of guilty against the defendant. If, on the other hand, gentlemen of the jury, you have a reasonable doubt of the truth and proof of any material allegation of the information, it is your duty to return a verdict of acquittal in favor of the defendant.

45 I have caused to be prepared for your consideration two forms of verdict:

One. We, the jury duly empaneled and sworn in the above-entitled action, upon our oaths do find the defendant not guilty.

Two. We, the jury duly empaneled and sworn in the above-entitled action, upon our oaths do find the defendant guilty as charged.

When you have retired to your jury room you will select from among your number a foreman and proceed to a consideration of the case, and when you have agreed upon a verdict cause him to sign that form of verdict which represents your conclusion and return it into open court. Your verdict must be unanimous, and in all your deliberations resolve every reasonable doubt in favor of the defendant.

You are further instructed, gentlemen, that if you believe beyond a reasonable doubt that Agnes Silka was employed by the Dominion Hotel, a corporation, and that the period of work performed by her on or about the 28th day of February, 1914, was performed in a period of time that exceeded twelve hours, you should find the defendant guilty.

You are instructed, gentlemen of the jury, that if you believe beyond a reasonable doubt that the person named in the complaint filed herein, to-wit, Agnes Silka, worked a period of eight hours and that that period of eight hours was worked in a period of time that exceeded twelve hours, then as a matter of law I instruct you that you should find the defendant guilty.

The Court: You may let the instructions requested on the part of the parties be filed, Mr. Clerk.

Mr. Malott: May the record show our exception to the instructions as given and to the ruling of the Court refusing to give the instructions requested by the defendant?

The Court: Let the record show that the defendant excepts to the instructions given and excepts to the ruling of the Court in refusing to give the instructions requested by the defendant.

46 In the Superior Court of Gila County, State of Arizona.

No. 239-A.

STATE OF ARIZONA, Plaintiff,

versus

DOMINION HOTEL, INC., Defendant.

Reporter's Certificate.

I, T. G. Cecil, official reporter of the above-entitled court, do hereby certify that I was present at the trial of the above-entitled cause on the seventh day of January, A. D. 1916; that as such Reporter I took shorthand notes of all oral applications, requests, orders, rulings, objections, actions, motions, stipulations, questions to and answers of witnesses; that I have extended the notes so taken by me at said trial, and that the foregoing nineteen pages of typewritten matter is a full, true and correct transcript of said notes so taken in said cause, and that the foregoing transcript contains all the oral evidence given in said cause.

Witness my hand, this twenty-fifth day of January, A. D. 1916.

T. G. CECIL.

47 In the Superior Court of Gila County, State of Arizona.

No. 239-A.

STATE OF ARIZONA, Plaintiff,

versus

DOMINION HOTEL, INC., Defendant.

Judge's Certificate.

I, G. W. Shute, Superior Judge of the County of Gila, State of Arizona, do hereby certify that the above and foregoing transcript of the evidence in the case of State of Arizona vs. Dominion Hotel, Incorporated, is a full, true and correct record of all oral applications, requests, orders, rulings, objections, actions, motions, stipulations, questions to and answers of witnesses, and that the foregoing transcript contains all the oral evidence given in said cause.

Done in Chambers this 19th day of Feb'y, 1916.

G. W. SHUTE,
Superior Judge.

48 (Endorsement: In the Superior Court of Gila County, State of Arizona. No. 239-A. State of Arizona, Plaintiff,

versus Dominion Hotel, Inc., Defendant. Before the Hon. G. W. Shute, Judge of said Court, and a jury, Globe, Arizona, January 7, 1916. Reporter's Transcript. Appearances: For the State: Norman J. Johnson, Esq., County Attorney and C. C. Faires, Esq., Assistant County Attorney. For the Defendant: Alderman & Elliott, Esqs., and James R. Malott, Esq. Presented to the Judge for Certification on this 19th day of February, 1916. J. W. Wentworth, Clerk. By Elsie Patton, Deputy. Returned by the Judge and refiled this 19th day of February, 1916. J. W. Wentworth, Clerk. By Elsie Patton, Deputy. Filed at — M. January 28th, 1916. J. W. Wentworth, Clerk. No. 407. In the Supreme Court, State of Arizona. Filed Mar. 24, 1916. C. F. Leonard, Clerk Supreme Court.)

49 In the Superior Court of the County of Gila, State of Arizona.

THE STATE OF ARIZONA, Plaintiff,

vs.

DOMINION HOTEL, Inc., Defendant.

Verdict.

We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths, do find: The defendant guilty as charged in the information.

W. W. LATHAM, *Foreman.*

(Endorsement: No. 239A. Superior Court. County of Gila. State of Arizona. State of Arizona, Plaintiff, vs. Dominion Hotel, Inc., Defendant. Verdict. Issued Jan. 7, 1916. Filed Jan. 7, 1916. J. W. Wentworth, Clerk.)

(Title of Court and Cause.)

Motion in Arrest of Judgment.

Comes now the defendant and moves the court to arrest the judgment in the above entitled action, on the following grounds, to-wit:

50 I.

That it appears upon the face of the information that said information fails to state facts sufficient to constitute a crime or a public offense under the laws of the State of Arizona or at all.

II.

That it appears upon the face of the information that said information fails to state facts sufficient to constitute a crime or a pub-

lic offense under the laws of the State of Arizona or at all, because said information undertakes to state a public offense under the term of Chapter 70 of the Laws, Resolutions and Memorials of the Third Special Session of the First Legislature of the State of Arizona, constituting Sections 717 to 720 inclusive of the Penal Code of the State of Arizona of 1913, and such act is violative of the Fourteenth Amendment of the Constitution of the United States of America in this, to-wit:

1. That said act in providing that the eight hour working period prescribed for females in certain designated occupations must not extend over a period of more than twelve hours, is such an unreasonable, unwarranted and arbitrary regulation of the working hours of women as to be entirely without justification even under the guise of the so-called police power, and is an arbitrary and capricious restraint of the defendant's liberty of contract.

2. That said act denies to this defendant equal protection of the laws of the state, inasmuch as said act makes an exception of
51 the application of the law to a certain class of employers of female labor, similarly situated with others of the same class, namely, to employers of female labor in railroad restaurants and eating houses located upon railroad rights of way and operated by or under contract with any railroad company, and is therefore void as unjust and discriminatory legislation.

Dated at Globe, Arizona, this 17th day of January, 1916.

ALDERMAN & ELLIOTT,
JAMES R. MALOTT,
Attorneys for Defendant.

Indorsed: Filed Jan. 14, 1916. J. W. Wentworth, Clerk. By Elsie Patton, Deputy.

Judgment.

239-A.

THE STATE OF ARIZONA

vs.

DOMINION HOTEL, INCORPORATED.

The County Attorney, Norman J. Johnson, Esq., and the defendant present by counsel, Alderman and Elliott and J. R. Malott, Esqs., and this being the hour for the sentence in this case, the Court says: "An information having been filed by the County Attorney of this County charging the Dominion Hotel with a misdemeanor. To this information a plea of not guilty was entered. On the 7th day of January, 1916, a fair and impartial trial was had in this
52 Court before a jury, and said jury returned into open Court, their verdict finding the said Dominion Hotel guilty as charged in the information. Is there any legal cause to show why the judgment of this Court should not now be pronounced against

the defendant, Dominion Hotel?" No legal cause being shown and none appearing to the Court, the Court doth render its judgment: "That whereas the Dominion Hotel on the 7th day of January, 1916, after a fair and impartial trial in this Court, was found guilty of a misdemeanor, it is ordered, adjudged and decreed that the said Dominion Hotel, is guilty of a misdemeanor, and that it be punished therefor by the payment of a fine of $100.00.

(Title of Court and Cause.)

Notice of Appeal.

Notice is hereby given that the above named defendant, Dominion Hotel, Inc., appeals to the Supreme Court of the State of Arizona from the judgment rendered in said court in the above entitled cause on the 17th day of January, 1916, which said judgment sentenced the defendant to pay a fine of $100, and from the whole of said judgment.

Dated at Globe, Arizona, this 28th day of February, 1916.

ALDERMAN & ELLIOTT,
JAMES R. MALOTT,
Attorneys for Defendant.

53 Indorsed: Filed Febr'y 28, 1916. J. W. Wentworth, Clerk.

Judge's Certificate of Reasonable Ground for Appeal.

(Title of Court and Cause.)

The undersigned, Judge of the Superior Court of Gila County, hereby certifies that in his opinion there is a reasonable ground for the appeal in the above entitled action.

Dated this 28 day of February, 1916.

G. W. SHUTE, *Judge.*

(Endorsed: Filed Feb'y 28, 1916. J. W. Wentworth, Clerk.

54 In the Supreme Court of Arizona.

Be It Remembered, that heretofore and upon the 19th day of December, 1916, being one of the regular juridical days of said Supreme Court, the following order and judgment, inter alia, was had and entered of record in said cause, in words and figures following, to-wit:

Criminal. No. 407.

DOMINION HOTEL, Inc., Appellant,

vs.

STATE OF ARIZONA, Respondent.

Opinion by Judge Cunningham.

This cause having been heretofore submitted and by the Court taken under advisement, and the Court having considered the same and being fully advised in the premises:

It Is Ordered, at this date, that the judgment of the lower court be and the same is hereby affirmed.

And on the same day, to-wit, the 19th day of December, 1916, being one of the regular juridical days of said Supreme Court, there was filed in the Clerk's office of said Supreme Court in said entitled cause a certain Opinion of the Court, in words and figures following, to-wit:

55 In the Supreme Court of Arizona.

Criminal. No. 407.

DOMINION HOTEL, Incorporated, Appellant,

vs.

STATE OF ARIZONA, Respondent.

Appeal from a judgment of the Superior Court of Gila County. G. W. Shute, Judge. Affirmed.

Statement of facts by the Court:

The appellant was informed against, tried and convicted for the violation of Paragraph 717, Penal Code of Arizona, 1913, viz.: having wilfully, intentionally, and unlawfully permitted one Agnes Silka, a female person, to be employed in its hotel dining room, and work eight hours, and to so work eight hours, said eight hours of work not being performed within a period of twelve hours. From the judgment of conviction the defendant appeals.

Messrs. Alderman and Elliott, and Mr. James R. Malott, all of Globe, for Appellant.

Mr. Wiley E. Jones, Attorney General, Messrs. G. W. Harben and R. Wm. Kramer, Assistants to the Attorney General, and Mr. Norman J. Johnson, County Attorney of Gila County, for Respondent.

56 CUNNINGHAM, *J.*:

The questions of law raised in this case are identical with the questions raised and decided in the case of State v. Dominion Hotel, Inc., 17 Ariz. 267, 151 Pac. 958.

In that case the female person employed was Ada Tessmer, and the date of the offense was March 2nd, 1914, while in this case the name of the female employee is Agnes Silka, and the date of the offense is February 28th, 1914. In all other respects the informations are identical in language employed.

The question of law presented in this case will not be again discussed at length. However, on this appeal the further question is argued and may with profit be discussed, because such question was not referred to in the previous case: I have reference to the question raised in several different manners, but will notice the question only as presented by the Seventh assignment of error, viz.:

"The court erred in refusing to give the instruction requested by the defendant, which is as follows:

'If you find from the evidence that Agnes Silka was employed upon the 28th day of February, 1914, in the restaurant or dining room of the Dominion Hotel by the defendant Dominion Hotel, Inc., and that a printed notice stating the hours of labor of the said Agnes Silka was posted in a conspicuous place in the room where the said Agnes Silka was employed, and that said hours of labor therein set forth did not exceed 8 hours, and if you further
57 find that the said Agnes Silka was not permitted on said date to work for the defendant at times not designated as a part of the working period in *said* posted notice, you are instructed to render a verdict of not guilty.'"

Referring to the notice in evidence, it appears that the notice required, on its face, the female employees to commence work at 6 o'clock, A. M., and to stop work at 8:30 o'clock, P. M., thereby requiring such female employees to be employed about the operation of appellant's business at a time not within the permitted hours of their employment: that is, defendant permitted said female employee to work a part of eight hours in performing a day's work, after a period of twelve hours elapsed from the time of the commencement of such day's work.

The evidence of the witnesses tended to show, without conflict, that this employee actually worked at the times, and at all times, specified for working in the notice; that she commenced and stopped work at the times named in the notice. The instruction in question in effect told the jury that if they believed this evidence, then the law is that the terms of the notice posted control the matter of permitted hours of such employee's employment, and the statute limiting the period of employment to twelve hours is ineffective. In other words, the period of time in which female employees are permitted
58 to deliver eight hours work, in restaurants and like occupations, is fixed by the notice posted, and not by the statute.

In the former case, in 17 Arizona 267, 270, we said that "The offense charged and defined by the statute is that the defend-

ant * * * a female employee, to be employed about the operation of its business at a time not within the permitted hours of her employment; that is, defendant permitted said female employee to work a part of 8 hours in performing a day's work after a period of 12 hours elapsed from the time of the commencement of such day's work."

The evidence in this record applicable to the instruction requested, including the notice posted, and the testimony of the witnesses, tends to establish that Agnes Silka was required by the statements contained on the face of the posted notice, and did in fact work a part of eight hours in performing a day's work after a period of twelve hours elapsed from the time of the commencement of such day's work, thereby, without conflict, supporting every essential requirement to establish the offense charged and defined by the statute as determined in 17 Arizona, supra. The requested instruction fails to recognize the nature of the offense charged and the application of the evidence establishing such offense. For that reason the court properly refused the instruction as requested.

Appellant in support of its contention, quoted, with confidence, the following passages from the opinion in the former case, viz:

59

"The offense created by the statute is permitting the female employee to work at times not designated as a part of the working period," and, "The fact essential to a conviction must be established that the female employee was permitted to work at a time other than the working time specified in the notice."

These passages quoted were used in the former opinion with reference to all of the offenses defined by Paragraph 717, supra, including all classes of employment, in arguing the proposition whether the employer-defendant was deprived of the equal protection of the law with railroad restaurant keepers and restaurants located upon railroad rights of way and operated under contract with railroad companies. It was there contended that operators of restaurants, hotels, and eating houses, not falling within the class of railroad restaurants were deprived of equal protection of the law, for the reason owners of the class to which respondent belonged were not permitted by the statute to cause their female employees, waitresses, to work as a portion of an eight hour day, after the twelve hour period had elapsed, while owners of railroad restaurants, etc., by reason of the exception in the statute could cause their female waitresses to work an aggregate of eight hours at any times during the whole twenty-four hours of the day. In that case the respondent there, the appellant here assumed that if the statute was valid, the notice posted directing the hours for work by its female waitresses, must limit the period for work to eight hours, and such eight hours' work must be performed within a period of twelve hours. Respondent's contention, in that case, was based upon such assumption and this court likewise indulged the same in its references to the notice posted. The court in its opinion says, immediately following the last word quoted:

60

"The fact that respondent and employers of like occupations are not permitted to apportion more than 12 hours of the day to the performance by female employees of 8 hours' work deprives them of no right of contract protected by the fourteenth amendment to the Constitution of the United States and section 4 of article 2 of the state Constitution."

We held in the former case, and this holding is within the clear, plain, unmistakable, terms of the statute, that the offense, charged in the information, and defined by the statute, "is, that the defendant permitted * * * a female employee, to be employed about the operation of its business at a time not within the permitted hours of her employment; that is, defendant permitted said female employee to work a part of 8 hours in performing a day's work after a period of 12 hours elapsed from the time of the commencement of such day's work." We said, page 270, "These facts admitted the commission of the offense
61 defined in the statute," that is, the demurrer admitted the facts referred to.

The facts appearing that the female employee performed labor only at the times specified in the posted notice for actual work, is not sufficient as a defense, unless the further fact appears that the notice required the day's work to be performed within a period of 12 hours from the time of commencing to the time of stopping, and that the prosecution relied upon Paragraph 718, Penal Code, for a conviction under evidence that the female employee was permitted to work at times other than those of the posted notice. Such was not the theory relied upon in this case for a conviction. Had such theory for conviction been relied upon the instruction requested would have still failed to present a correct proposition of law, because it fails to take into consideration that the posted notice must require the eight hours' work period to fall within a period of twelve hours, otherwise, it is invalid as a binding notice when intended to affect the employments here under consideration.

The record contains no error, and the judgment is therefore affirmed.

D. L. CUNNINGHAM, *Judge.*

We concur:

HENRY D. ROSS, *Chief Justice.*
ALFRED FRANKLIN, *Judge.*

62 (Endorsement: Criminal No. 407. In the Supreme Court of Arizona. Dominion Hotel, Incorporated, Appellant, vs. State of Arizona, Respondent. Opinion. Filed this 19th day of December, 1916. C. F. Leonard, Clerk. Recorded Book 3, Page 289.)

(Title of Court and Cause.)

Petition for Writ of Error.

To the Honorable Alfred Franklin, Presiding Judge of the Supreme Court aforesaid:

Comes now Dominion Hotel, Inc., a corporation, appellant in the above cause, and would show to this Honorable Court:

That in the records and proceedings and rendition of the judgment in the above entitled cause by the Supreme Court of the State of Arizona, it being the highest court of said state in which a decision could be had on the said suit between the State of Arizona and Dominion Hotel, Inc., manifest error has occurred, greatly to its damage whereby petitioner feels aggrieved.

That in the records and proceedings it will appear that there was drawn in question the validity of a statute of said state on the ground of repugnancy to the Constitution of the United States and the decision was in favor of the validity of the laws of said state.

63 That on or about May 11, 1914, the County Attorney of Gila County, Arizona, filed in the Superior Court thereof an information which charged that your petitioner on the 28th day of February, 1914, was engaged in the hotel business in Globe, Arizona, and did on said day permit one Agnes Silka, a female person, to be employed by and work in its hotel an eight hour period which was not performed within twelve hours. It was further charged that your petitioner was not then and there engaged in the business of conducting a railroad restaurant or eating house located upon a railroad right-of-way or operated by or under contract with any railroad company. To this information, on January 6, 1916, your petitioner filed an amended demurrer alleging that the information failed to state facts sufficient to constitute a crime or public offense, because it undertook to state a public offense under the terms of Chapter 70 of the Laws, Resolutions and Memorials of the Third Special Session of the First Legislature of the State of Arizona, constituting sections 717 to 720 of the Penal Code of the State of Arizona, 1913, which act is violative of the Fourteenth Amendment of the Constitution of the United States of America, and is arbitrary and discrim-atory legislation. Thereafter, the demurrer having been overruled your petitioner entered a plea of not guilty, and the issues raised by the pleadings came on for trial, before a jury duly empaneled in

64 said action, which jury found a verdict of guilty against your petitioner. On January 17, 1916, a judgment sentencing your petitioner to the payment of a fine of One Hundred Dollars ($100.00) was made and entered by the Superior Court of said Gila County, from which judgment your petitioner appealed to the Supreme Court of the State of Arizona, and the appeal duly coming on for argument before said court, your petitioner contended that said judgment should be reversed, and that said complaint should be dismissed for the reason that the statute under which your peti-

tioner was pro-ecuted made it illegal for your petitioner to permit a female in its employe to work in its restaurant a period of eight hours a day when such eight hour period was not concluded within twelve consecutive hours, whereas said statute did not make such acts illegal on the part of a railroad restaurant or eating house located upon a railroad right-of-way and operated by or under any contract with any railroad company, thereby illegally and arbitrarily discriminating against your petitioner, in contravention the provisions of the Fourteenth Amendment to the Constitution of the United States. The Supreme Court of said state handed down an opinion and made and entered an order, which opinion and order were filed and entered in the office of the clerk of said Supreme Court, December 19, 1916, and caused a certified copy thereof to be filed in the office of the clerk of the Superior Court of said Gila County with the original papers of said appeal on
65 the 6th day of January, 1917; all of which is fully apparent in the record and proceedings of the case and specifically set forth in the assignment of errors filed herewith.

Wherefore, petitioner prays that a writ of error be allowed and that a transcript of the record, proceedings and papers upon which said judgments and orders were made, duly authenticated, be ordered sent to the Supreme Court of the United States, at Washington, D. C., under the rules of said court in such cases made and provided, that the same may be inspected and corrected as according to law and justice should be done.

JAMES R. MALOTT,
S. H. MORRIS,
E. E. ELLINWOOD,
Attorneys for Petitioner.

Receipt of a copy of the within is hereby admitted this 23rd day of February, 1917.

WILEY E. JONES,
Att'y General;
G. W. HARBEN,
Ass't Att'y General;
R. WM. KRAMER,
Ass't Att'y General,
Attorneys for Respondent.

(Endorsement: No. 407. In the Supreme Court of the State of Arizona. Dominion Hotel, Inc., Appellant, v. State of Arizona, Respondent. Petition for Writ of Error. Filed Feb. 23, 1917. C. F. Leonard, Clerk Supreme Court. Morris & Malott, Globe, Arizona, Attorneys for Appellant.)

66 (Title of Court and Cause.)

Assignment of Errors.

Comes now the Dominion Hotel, Inc., a corporation, defendant and appellant in the above entitled cause, and files the following assignment of errors upon which it will rely upon its prosecution of its writ of error in the above entitled cause, from the order made and entered by this Honorable Court on the 19th day of December, 1916, affirming the judgment of the trial court, namely, the Superior Court of Gila County:

I.

The trial court erred in overruling the amended demurrer to the information. It was contended at the trial and is now contended that that portion of Section 717 of the Penal Code under which the information was filed is violative of the Fourteenth Amendment to the Constitution of the United States of America in that it denies this defendant and plaintiff in error the equal protection of the laws of the State, and that the information therefore failed to state facts sufficient to constitute a crime or public offense.

II.

The trial court erred in denying the motion of defendant and plaintiff in error that the information be dismissed, for the same reason stated in Assignment No. 1, that the information fails
67 to state facts sufficient to constitute a crime or public offense.

III.

The trial court erred in denying the motion of plaintiff in error (based on the insufficiency of the evidence to warrant a conviction) that the jury be directed to acquit the defendant, for the following reasons:

(*a*) That the only charge proven was that the plaintiff in error permitted one Agnes Silka to work in the restaurant of the Dominion Hotel for an eight hour period that was not performed within twelve hours; said restaurant not then and there being a railroad restaurant or eating house located upon a railroad right-of-way, or operated by or under contract with any railroad company.

(*b*) It was contended at the trial and is now contended that that portion of Section 717 of the Penal Code which provides that the eight hour period of work be performed within twelve hours, is void as to restaurants for the reason that said Section 717 excepts from such twelve hour restriction railroad restaurants or eating houses located upon railroad rights-of-way and operated by and under contract with any railroad, and discriminates against all other restaurants and eating houses, denying them the equal protection under the

laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

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IV.

The trial court erred in permitting the admission of any testimony in the case. Such evidence was and is objected to as irrelevant and immaterial for the same reason stated in Assignment No. 1, that the information fails to state facts sufficient to constitute a crime or public offense.

V.

The trial court erred in denying the motion of plaintiff in error that the court discharged the jury, for the reason as stated in Assignment No. 1, that the information fails to state facts sufficient to constitute a crime or public offense.

VI.

The trial court erred in denying the motion of plaintiff in error in arrest of judgment for the reason as stated in Assignment No. 1, that the information fails to state facts sufficient to constitute a crime or public offense.

VII.

The trial court erred in refusing to give the instruction requested by the plaintiff in error, which is as follows:

"If you find from the evidence that Agnes Silka was employed upon the 28th day of February, 1914, in the restaurant or dining room of the Dominion Hotel by the defendant Dominion Hotel, Inc., and that a printed notice stating the hours of labor of the said Agnes Silka was posted in a conspicuous place in the room where the said Agnes Silka was employed, and that said hours of labor therein set forth did not exceed 8 hours, and if you further

69 find that the said Agnes Silka was not permitted on said date to work for the defendant at times not designated as a part of the working perior in said posted notice, you are instructed to render a verdict of not guilty."

The foregoing instruction correctly states the law applicable to the case for the reasons as stated in Assignment No. 3.

VIII.

The trial court erred in instructing the jury as follows:

"Thus, if you believe, gentlemen of the jury, from the evidence that has been introduced here, beyond a reasonable doubt, that the defendant, the Dominion Hotel, Inc., employed girls in the hotel in this county and state for a period of seven and one-half hours, and that such seven and one-half hours extended beyond the twelve hour period, it should be your duty to return a verdict of guilty against the defendant."

For the reasons stated in Assignment No. 3, the defendant was not guilty of a violation of the law in employing Agnes Silka in its restaurant seven and one-half hours, even though such seven and one-half hour period was not completed in twelve hours, and the instruction therefore was and is erroneous.

IX.

The trial court erred in instructing the jury as follows:

"You are further instructed, gentlemen, that if you believe beyond a reasonable doubt that Agnes Silka was employed by the Dominion Hotel, a corporation, and that the period of work performed by her on or about the 28th day of February, 1914, was performed in a period of time that exceeded twelve hours,
70 you should find the defendant guilty."

The foregoing instruction was and is erroneous for the same reasons set forth in Assignments Nos. 3 and 8.

X.

The trial court erred in instructing the jury as follows:

"You are instructed, gentlemen of the jury, that if you believe beyond a reasonable doubt that the person named in the complaint filed herein, to-wit, Agnes Silka, worked a period of eight hours and that that period of eight hours was worked in a period of time that exceeded twelve hours, then as a matter of law I instruct you that you should find the defendant guilty."

The foregoing instruction was and is erroneous for the same reasons as set forth in Assignments Nos. 3 and 8.

XI.

The Supreme Court of the State of Arizona erred in sustaining the judgment of the trial court for the reasons set forth in Assignments 1 to 10 inclusive.

Wherefore, the plaintiff in error prays that the said judgment and order of the Supreme Court of the State of Arizona entered in the above cause on the 19th day of December, 1916, be reversed.

JAMES R. MALOTT,
S. H. MORRIS,
E. E. ELLINWOOD,
Attorneys for Plaintiff in Error.

Receipt of a copy of the within is hereby admitted this 23rd day of February, 1917.

71

WILEY E. JONES,
Att'y General;
R. WM. KRAMER,
Ass't Att'y General;
G. W. HARBEN,
Ass't Att'y General;
Attorneys for Respondent.

(Endorsement: No. 407. In the Supreme Court of the State of Arizona. Dominion Hotel, Inc., Appellant, v. State of Arizona, Respondent. Assignment of Errors. Filed Feb. 23, 1917. C. F. Leonard, Clerk Supreme Court. Morris & Malott, Globe, Arizona, Attorneys for Appellant.)

(Title of Court and Cause.)

Prayer for Reversal.

Comes now Dominion Hotel, Inc., a corporation, plaintiff in error, and prays for a reversal of the judgment and order of affirmance of the Supreme Court of the State of Arizona, in the action brought by the State of Arizona, plaintiff, respondent, against Dominion Hotel, Inc., defendant, appellant, which judgment and order was entered in the office of the clerk of the Supreme Court of the State of Arizona, on or about the 19th day of December, 1916; and also prays for a reversal of the judgment in said action of the Superior Court of Gila County, Arizona, on or about January 17, 1916.

Dated and signed this the 23rd day of February, 1917.

72 JAMES R. MALOTT,
S. H. MORRIS,
E. E. ELLINWOOD,
Attorneys for Plaintiff in Error.

Receipt of a copy of the within is hereby admitted this 23rd day of February, 1917.

WILEY E. JONES, *Att'y General;*
R. WM. KRAMER, *Ass't Att'y General;*
G. W. HARBEN, " " "
Attorneys for Defendant in Error.

(Endorsement: No. 407. To the Honorable the Supreme Court of the United States. Dominion Hotel, Inc., Plaintiff in Error, against State of Arizona, defendant in error. Prayer for reversal. Filed Feb. 23, 1917. C. F. Leonard, Clerk Supreme Court. Morris & Malott, Globe, Arizona. E. E. Ellinwood, James R. Malott, S. H. Morris, Attorneys for plaintiff in error.)

(Title of Court and Cause.)

Bond on Writ of Error.

Know all men by these presents: That we, Dominion Hotel, Inc., a corporation, as principal, and P. P. Greer and T. A. Pascoe, as sureties, are held and firmly bound unto the State of Arizona, in the full and just sum of One Thousand Dollars ($1,000.00)
73 to be paid to the said State of Arizona, for the payment of which well and truly to be made, we bind ourselves, our

successors, executors, administrators and assigns, jointly and severally, firmly by these presents.

Signed with our seals and dated this 21st day of February, 1917.

Whereas lately at a regular term of the Superior Court of Gila County, State of Arizona, sitting at Globe, Arizona, in a suit pending in said Court between the State of Arizona, plaintiff, and said Dominion Hotel, Inc., defendant, final judgment was rendered against said Dominion Hotel, Inc., for the sum of One Hundred Dollars ($100.00), which judgment was duly appeared to the Supreme Court of the State of Arizona, and therein affirmed, by an order of said Supreme Court of the State of Arizona on the 19th day of December, 1916, and said Dominion Hotel, Inc., is about to obtain a writ of error to reverse the judgment of said court in said suit, and a citation directed to said State of Arizona, defendant in error, citing said State to be and appear before the Supreme Court of the United States according to law within sixty days from the date hereof;

Now therefore, the condition of the above obligation is such that if said Dominion Hotel, Inc., shall pursue its writ of error to effect and if it fails to make its plea good, shall answer all damages and costs, then this obligation to be null and void; otherwise to remain in full force, effect and virtue.

74

DOMINION HOTEL, INC.,
Principal.

By A. HANSEN,
Its Manager.

P. P. GREER,
T. A. PASCOE,
Sureties.

STATE OF ARIZONA,
County of Gila, ss:

P. P. Greer and T. A. Pascoe being duly sworn, each for himself, deposes and says:

That he is one of the sureties who signed the foregoing bond; that he is a resident, householder and freeholder within the County of Gila, State of Arizona, and is worth the sum of One Thousand Dollars ($1,000.00), the amount specified in said bond, over and above all just debts and liabilities, exclusive of property exempt from execution.

P. P. GREER.
T. A. PASCOE.

Subscribed and sworn to before me this the 21st day of February, 1917.

My commission as Notary Public expires October 6, 1919.

[SEAL.]

LOUISE L. ROSS,
Notary Public in and for
Gila County, State of Arizona.

The foregoing bond and the sureties therein named, are hereby approved this 23rd day of February, 1917.

ALFRED FRANKLIN,
Chief Justice of the Supreme Court aforesaid.

75 Receipt of a copy of the within is hereby admitted this 23rd day of February, 1917.

WILEY E. JONES,
Att'y General;
R. WM. KRAMER,
Ass't Att'y General;
G. W. HARBEN,
Ass't Att'y General;
Attorneys for Defendant and Respondent.

(Endorsement: No. 407. In the Supreme Court of the State of Arizona. Dominion Hotel, Inc., Appellant, v. State of Arizona, Respondent. Bond on Writ of Error. Filed Feb. 23, 1917. C. E. Leonard, Clerk Supreme Court. Morris & Malott, Globe, Arizona, Attorneys for Appellant.)

(Title of Court and Cause.)

Order of Allowance.

On this the 23rd day of February, A. D. 1917, came on to be heard the application of Dominion Hotel, Inc., defendant and appellant, said defendant and appellant being represented by counsel, for a writ or error, and it appearing to the Court from the petition filed herein and the record filed herewith that the application ought to be granted, and that a transcript of the record and proceedings and papers upon which the judgment of the court was rendered, properly certified, should be sent to the Supreme Court of the United States, as prayed for in the petition, that such proceedings

76 may be had as will be just in the premises;

It is therefore ordered that the writ of error be allowed upon the plaintiff giving bond, conditioned as the law directs, in the sum of One Thousand Dollars ($1,000.00), which may operate as a supersedeas; and that a true copy of the record, assignment of errors and all proceedings had in the case in the Superior Court of Gila County, State of Arizona, and in the Supreme Court of the State of Arizona, shall be transmitted to the Supreme Court of the United States, properly certified as the law directs, that the said court may inspect the same and do what according to law should be done.

ALFRED FRANKLIN,
Chief Justice, Supreme Court of the State of Arizona.

UNITED STATES OF AMERICA,
District of Arizona, ss:

I, Mose Drachman, Clerk of the United States District Court for the District of Arizona, do hereby certify the above and foregoing to be a true and correct copy of an Order Allowing Writ of Error in the case of Dominion Hotel, Inc., Appellant, vs. State of Arizona, Respondent, on appeal to the Supreme Court of the United States, as the same appears from the original order on file and of record in this office at Tucson, Arizona.

Witness my hand and the seal of said Court affixed hereto
77 at Tucson, Arizona, this 3rd day of March, A. D., 1917.

[SEAL.] MOSE DRACHMAN, *Clerk.*
By EFFIE D. BOTTS, *Deputy.*

(Endorsement: No. 407. In the Supreme Court of the State of Arizona. Dominion Hotel, Inc., Appellant, v. State of Arizona, Respondent. Order of Allowance. Filed in United States District Court for District of Arizona at Tucson, Arizona, February 23rd, A. D., 1917. Mose Drachman, Clerk, by Effie D. Botts, Deputy. Filed Mar. 7, 1917. C. F. Leonard, Clerk Supreme Court. Morris & Malott, Globe, Arizona, Attorneys for Appellant.)

78 In the Supreme Court of the State of Arizona.

Clerk's Certificate.

SUPREME COURT,
State of Arizona, ss.:

I, C. F. Leonard, Clerk of the Supreme Court of the State of Arizona, do hereby certify that the foregoing pages, numbered from 1 to 77, inclusive, contain a full, true and complete transcript of the

(1) Information;
(2) Amended demurrer, filed January 6, 1916;
(3) Minute Entries, as follows:
  (*a*) Order of trial court overruling amended demurrer,
  (*b*) Motion of plaintiff in error and defendant to dismiss the information, and the trial court's order denying such motion,
  (*c*) Plea to the information,
  (*d*) Motion of plaintiff in error and defendant that the trial court direct the jury to acquit the defendant, and order denying same,
  (*e*) Motion of plaintiff in error and defendant that the trial court discharge the jury, and order denying the same,
  (*f*) Order denying motion for new trial,
79 (*g*) Exceptions of plaintiff in eror and defendant to each of said orders:
(4) Minutes of the trial;
(5) Plaintiff's Exhibit 2, in evidence;

(6) Instructions requested by defendant and plaintiff in error and endorsements thereon;
(7) Instructions given by the court;
(8) Transcript of Reporter's notes;
(9) Verdict of the jury;
(10) Motion in arrest of judgment;
(11) Judgment of the trial court;
(12) Notice of Appeal to the Supreme Court of the State of Arizona;
(13) Judge's Certificate of reasonable ground for appeal;
(14) Judgment of Supreme Court of the State of Arizona, affirming judgment of the Superior Court of Gila County, State of Arizona;
(15) Opinion filed by the Supreme Court of the State of Arizona;
(16) Petition for Writ of Error;
(17) Assignment of Errors;
(18) Prayer for reversal;
(19) Bond on writ of error, and approval;
(20) Allowance of writ of error;

80 (21) Certificate of Clerk of the Supreme Court, as the same remain on file and of record in my office, being all that portion of the original record indicated by appellant herein by its praecipe, filed in said cause, as necessary to the consideration of the questions to be reviewed; and that appellee herein has not filed any additional praecipe in said cause.

And I further certify that the Writ of Error and Citation on Writ of Error, attached hereunto, is the original Writ of Error and Citation issued by the said Supreme Court of the State of Arizona in the above entitled cause.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Supreme Court of the State of Arizona, at the City of Phoenix, this 16th day of April, A. D. 1917.

[Seal Supreme Court, State of Arizona.]

C. F. LEONARD,
Clerk of the Supreme Court of the State of Arizona.

81 In the Supreme Court of the State of Arizona.

DOMINION HOTEL, INC., Defendant and Appellant,

v.

STATE OF ARIZONA, Plaintiff and Respondent.

Writ of Error.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable Judges of the Supreme Court of the State of Arizona, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said Supreme Court of the

State of Arizona, before you, or some of you, being the highest court of law of said state in which a decision could be had in the said suit between Dominion Hotel, Inc., defendant and appellant, and the State of Arizona, plaintiff and respondent, wherein was drawn in question the validity of a statute of said state on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of the validity of said statute; a manifest error has happened to the great damage of the Dominion Hotel,
82 Inc., as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that then under this seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 24th day of April next in the said Supreme Court to be then and there held, that the record and proceedings aforesaid be inspected, that the Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward Douglass White, Chief Justice of the said Supreme Court, the 23 day of February, in the year of our Lord, one thousand nine hundred and seventeen.

[Seal United States District Court, District of Arizona.]

MOSE DRACHMAN,
Clerk of the United States District Court
for the District of Arizona.

The foregoing writ is hereby allowed this 23rd day of February, 1917.

ALFRED FRANKLIN,
Chief Justice of the Supreme Court
of the State of Arizona.

83 Receipt of a copy of the *with* within is hereby admitted this 24th day of February, 1917.

WILEY E. JONES,
Att'y General,
By GEO. W. HARBEN,
——— ———,
Attorneys for Respondent.

84 [Endorsed:] No. 407. In the Supreme Court of the State of Arizona. Dominion Hotel, Inc., Appellant, v. State of Arizona, Respondent. Writ of Error. Filed Feb. 24, 1917. C. F. Leonard, Clerk Supreme Court. Morris & Malott, Globe, Arizona, Attorneys for Appellant.

85 In the Supreme Court of the State of Arizona.

DOMINION HOTEL, INC., Appellant,

v.

STATE OF ARIZONA, Respondent.

Citation on Writ of Error.

THE UNITED STATES OF AMERICA, *ss:*

To the State of Arizona, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States to be holden in the City of Washington, D. C., within sixty (60) days from the date hereof, next pursuant to a writ of error filed in the office of the clerk of the Supreme Court of the State of Arizona, wherein Dominion Hotel, Inc., was plaintiff, and you were defendant, that you may answer why the judgment rendered against Dominion Hotel, Inc., the plaintiff in error, may not be reversed and justice done in the premises.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, this 23rd day of February, in the year of our Lord, one thousand nine hundred and seventeen.

ALFRED FRANKLIN,
Chief Justice Supreme Court
of the State of Arizona.

86 Receipt of a copy of the within is hereby admitted this 24 day of February, 1917.

WILEY E. JONES,
Att'y General,
By GEO. W. HARBEN,
——— ———,
Attorneys for Respondent.

[Endorsed:] No. 407. In the Supreme Court of the State of Arizona. Dominion Hotel, Inc., Appellant, v. State of Arizona, Respondent. Citation on Writ of Error. Filed Feb. 24, 1917. C. F. Leonard, Clerk Supreme Court. Morris & Malott, Globe, Arizona, Attorneys for Appellant.

Endorsed on cover: File No. 25,921. Arizona Supreme Court. Term No. 1091. Dominion Hotel, Inc., plaintiff in error, vs. The State of Arizona. Filed April 24th, 1917. File No. 25,921.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 178.

DOMINION HOTEL, INC., PLAINTIFF IN ERROR,

vs.

THE STATE OF ARIZONA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARIZONA.

BRIEF FOR PLAINTIFF IN ERROR.

Statement of the Case.

In the Superior Court of Gila County, State of Arizona, plaintiff in error was found guilty and adjudged to pay a fine upon an information charging it with the commission of an offense defined by paragraph 717, Penal Code of Arizona, 1913. Said paragraph is as follows:

> "No female shall be employed or be permitted to work in any mercantile establishment, confectionery

store, bakery, laundry, hotel, restaurant, or telephone or telegraph office or exchange, in this State, more than eight hours during any one day or more than fifty-six hours during any one week; provided, that at least one hour for meals be allowed each female during her working period, but no part of such hour for meals shall be included as a part of the permitted working period; *provided further, that the said eight-hour period of work shall be performed within a period of twelve hours, the period of twelve hours during which such labor must be performed not to be applicable to railroad restaurants or eating-houses located upon railroad rights of way and operated by or under contract with any railroad company;* and provided further, that in any such mercantile establishment, confectionery store, or bakery, where females are employed for six days only in any one week, two additional hours (making a total working period of ten hours) may be added to said permitted period of daily labor on one of said six working days, but in all cases the permitted period of daily labor must be performed within said period of twelve hours; and provided further, that the provisions of this section shall not apply to females employed in any such telephone or telegraph office or exchange in which not more than three females are employed or to female nurses." (The italics are ours.)

The only violation of the statute charged was that the Dominion Hotel permitted a female employee "to work eight (8) hours, and that said eight (8) hours of work was not then and there performed within a period of twelve (12) hours" (R., 2). The undisputed facts are that the plaintiff in error employed one Agnes Silka, a female, in its restaurant as a waitress on the twenty-eighth (28th) day of February, 1914, from 7:00 a. m. to 10:00 a. m., from 12:00 m. to 2:00 p. m., and from 6:00 p. m. to 8:30 p. m., with side work of one-half an hour. She had no duties aside from those in the restaurant and she did not work in excess of eight hours. The restaurant of plaintiff in error was not owned or operated by or under contract with a railroad.[1]

The judgment was affirmed by the Supreme Court of the State (*Dominion Hotel, Inc., vs. State,* 161 Pac., 682), and the case is brought here upon the ground that the statute, as construed and applied in this case, is in conflict with that provision of the Fourteenth Amendment of the Constitution of the United States which declares that no State shall deny any person within its jurisdiction the equal protection of the laws.

The plaintiff in error does not seek to attack the eight-hour provision of the law in any way. It does contend, however, as it contended at the trial, that the provision of the statute requiring the eight hours of labor to be completed in twelve consecutive hours when performed in restaurants is void, for the reason that the law does not operate equally against all restaurants, but specifically exempts from such twelve-hour restriction all railroad restaurants or eating-houses located on railroad rights of way and operated by or under contract with any railroad. Such a provision discriminates against the plaintiff in error and denies it the equal protection under the laws guaranteed by the Fourteenth Amendment.

The question of the validity of the portion of the statute we are attacking was raised in the trial court by demurrer (R., 2), a motion to dismiss the information (R., 4, fol. 7), an objection to the admission of any testimony in the case (R., 16, fol. 29), a motion that the court discharge the jury (R., 4, fol. 8), and, after the admission of evidence showing that the female employee was employed in the restaurant of the plaintiff in error and had no other work, by a motion for an instructed verdict of acquittal (R., 28, fol. 41), a motion in arrest of judgment (R., 34, fol. 50), by instructions requested (R., 11, f. 20), and by an exception to the instructions given by the court (R., 32, fol. 45).

Specification of Error.

The assignment of errors presented (R., 43) may all be compressed into the following basic proposition:

That portion of section 717 of the Penal Code of Arizona providing that where females are employed in restaurants or eating-houses their eight-hour period of work shall be performed within a period of twelve hours, except when performed in railroad restaurants or eating-houses located upon railroad rights of way and operated by or under contract with any railroad company, violates the Fourteenth Amendment of the Federal Constitution, in that it denies the plaintiff in error the equal protection of the law.

ARGUMENT.

The Classification Bears No Relation to the Purpose of the Law.

In enacting the law in question, the evident purpose of the Arizona Legislature was to safeguard the health of female employees in certain designated occupations. The eight-hour limitation on the number of hours that women can be required to work in Arizona applies to all restaurants and hotels, whether owned and operated by railroad companies or individuals, and with such a desirable restraint no one who has the slightest regard for the welfare of society could offer any criticism. The undeniable effect of the statute involved in this case, as it was construed by the Arizona courts, however, is to impose upon some employers of female labor one restriction on their right to contract with their employees that is not imposed upon all employers of the same class. The plaintiff in error was held to be and now is guilty of a misdemeanor if it permits its waitresses to serve meals from 7 a. m. to 10 a. m., from 12 m. to 2 p. m., and from 6 p. m. to 8:30 p. m., since said hours of work cover a greater

period than twelve hours; but a railroad eating-house, which may be a competitor, catering to the same class of trade and located just across the street, can permit its waitresses to work the same hours without fear of prosecution, since it comes within the class favored by the law. To avoid prosecution the plaintiff in error is compelled either to hire an extra shift of waitresses to serve one meal, to employ less efficient and more expensive male employees, or to close its plant for a part of the few customary meal hours during which it is operated (Record, page 25, fol. 38). The first question we present in this case, therefore, is whether there is any such proper and justifiable distinction between the two classes of restaurants, considering the purpose of the law, as to warrant the discrimination which permits the one class to do legally that which it is illegal for the other to do.

It has been repeatedly determined that one of the essential elements of classification as distinguished from discrimination in legislation is that the classification shall be based upon a distinction having reference to the subject-matter of the legislation. In the case of *Gulf, Colorado & Santa Fe Railway Company vs. Ellis*, 165 U. S., 150; 41 L. Ed., 666-668, this honorable court, speaking through Mr. Justice Brewer, declared that any proper basis for an attempted classification "must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis."

Thereafter, in the case of *Atchison, Topeka & Santa Fe Railroad Company vs. Matthews*, 174 U. S., 96, 105; 43 L. Ed., 909, the rule is again declared as follows (page 913):

> "Even where the selection is not obviously unreasonable and arbitrary, if the discrimination is based upon matters which have no relation to the object sought to be accomplished, the same conclusion of unconstitutionality is affirmed."

The court then explained that the apparent conflicting decisions on the question have resulted, not upon the principle or rule itself, but from the application of the rule to the facts. The case of *Yick Wo vs. Hopkins*, 118 U. S., 356; 30 L. Ed., 220, was cited by Justice Brewer in the foregoing case as a forcible illustration of the rule. In the latter case the Board of Supervisors of San Francisco County passed certain ordinances ostensibly for the regulation of the laundry business. It divided the laundrymen who were owners or occupants of wooden buildings, however, into two classes: those who were permitted to pursue their industry by the Board of Supervisors and those who were not. The board in issuing its licenses discriminated against Chinese laundrymen. In holding the imprisonment of the petitioner under said ordinances illegal, this court held that although the law was apparently a regulation of the laundry business, yet the requirement that a license must be secured from the supervisors, who had the power to refuse and did refuse it in spite of a compliance by the Chinese laundrymen with every other requisite deemed necessary for protection from fire or as a protection against injury to the public health, was not valid, for the reason that it bore no relation to the ostensible purpose of the law, but in effect was solely a method of discriminating against the Chinese.

The rule was reiterated in the recent case of *Atchison, Topeka & Santa Fe Railway Company vs. Vosburg*, 238 U. S., 56, 59; 59 L. Ed., 1199-1200, wherein a Kansas statute, which allowed a reasonable attorney fee to a shipper who successfully sues a railroad company for failure to furnish cars and made no allowance in favor of the railway company in the event of its successful prosecution of a suit brought by it under such statute against a shipper who failed to use the cars promptly, was under consideration. The court there declared that—

> "The constitutional guaranty entitles all persons and corporations within the jurisdiction of the State to the protection of equal laws, in this as in other de

partments of legislation. It does not prevent classification, but does require that classification shall be reasonable, not arbitrary, *and that it shall rest upon distinctions having a fair and substantial relation to the object sought to be accomplished by the legislation.*" (The italics are ours.)

An application of the rule to a set of facts somewhat similar to those existing in the present case was recently made in the case of *State vs. Le Barron*, 162 Pac., 265 (Wyoming, 1917). The court was construing a Wyoming statute fixing hours of labor for women which contained a provision excepting hotels and restaurants operated by railroad companies from the restrictions applying to all other hotels and restaurants. It called attention to the fact that the purpose of the act was the protection of the health of females employed in restaurants, by a regulation of the hours of their employment, and that although the nature of their work in all restaurants, including railroad restaurants, was similar, there was in the statute an exception or selection of particular restaurants from a general class. Continuing, the court said (page 267):

> "It is not a statute to promote the convenience of the traveling public or the employees of railroads, but to protect the health of females employed in restaurants; and we apprehend that the health of a female may be as seriously injured or impaired by working overtime for the benefit and convenience of the traveling public, or railroad employees, in a restaurant operated by a railroad company as in any other. But if the reasons advanced by the attorney general were to be held sufficient as a basis for classification, the exception is not limited to restaurants conducted solely for the benefit and convenience of the traveling public and railroad employees, but includes all restaurants operated by railroad companies. We are therefore of the opinion that the statute in question arbitrarily and without any substantial basis therefor discriminates between those engaged in the same class of business; that it deprives restaurant keepers, other

> than railroad companies, of the equal protection of the law and imposes upon them and their employees burdens not imposed upon railroad companies engaged in the same class of business and in substantially the same situation; that it is class legislation and does not operate uniformly upon all of the same class, and in so far as it applies to the hours of labor for restaurants—that being the only question before us—it is unconstitutional and void."

We do not believe that any one will have the hardihood to assert that the nature of the employment of waitresses in railroad restaurants is different from that in other restaurants. And under the facts of the present case, the plaintiff in error might be said to operate a railroad restaurant except for the single question of ownership. A railroad restaurant caters to the same class of persons and at the same hours as the plaintiff in error. It appears from the record (page 27, fol. 40), that the plaintiff in error served transients arriving on an evening train and departing on a morning train. Moreover, as plaintiff in error offered to show, it operated its restaurant at the hours complained of by the State, for the convenience of these transients. We further offered to show that the restaurant in question was located near the railroad station. On the question of whether ownership alone constitutes a sufficient ground for the classification of restaurants we desire to cite the case of *Vandalia R. Co. vs. Stilwell* (Ind., 1914), 104 N. E., 289, 296, in which the Supreme Court of the State of Indiana declared that "The character of the employment, and not the character of the employer, must be the true test." The above case was affirmed without opinion by this court on January 17, 1916, 239 U. S., 637; 60 L. Ed., 480.

The Law Does Not Apply to All Members of the Same Class.

As we have already shown, the law divides restaurants into two divisions—railroad restaurants and all others. But that such a sub-classification cannot be legally made has been

repeatedly decided by the courts. Mr. Justice Field stated in the case of *Barbier vs. Connolly*, 113 U. S., 27; 28 L. Ed., 923, that the intent of the Fourteenth Amendment was "not only that there should be no arbitrary deprivation of life or liberty or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights."

The same justice clearly pointed out in *Soon Hing vs. Crowley*, 113 U. S., 703; 28 L. Ed., 1145, 1147, that:

> "The discriminations which are open to objection are those where persons engaged in the same business are subjected to different restrictions, or are held entitled to different privileges under the same conditions."

The rule was stated in *Powell vs. Commonwealth of Pennsylvania*, 127 U. S., 678; 32 L. Ed., 253, 256, to the effect that one's enjoyment "upon terms of equality with all others in similar circumstances of the privilege of pursuing an ordinary calling or trade, and of acquiring, holding, and selling property, is an essential part of his rights of liberty and property, as guaranteed by the Fourteenth Amendment."

There can be no question but that the restaurant operated by the plaintiff in error and one owned by or operated under contract with a railroad company are engaged in the same business, to wit, feeding the public. That the law places burdens upon one that it does not place upon the other is evidenced by the fact that this plaintiff in error was convicted for doing what the railroad restaurant is expressly permitted to do.

We find a good expression of the rule in the case of *State vs. Julow*, 129 Mo., 163; 31 S. W., 781. The question involved was the constitutionality of a Missouri statute making it unlawful for an employer to "attempt to compel or coerce any employee into withdrawal from any lawful organization or society." After stating that the statute did not apply to

all working men, but only to those who belonged to some lawful organization or society, the court declared (page 783):

> "The legislature may legislate in regard to a class of persons, but they cannot take what may be termed a natural class of persons, split that class in two, and then arbitrarily designate the dissevered fractions of the original unit as two classes, and enact different rules for the government of each. This would be a very arbitrary classification, without any basis of reason on which to rest, and would resemble a classification of men by the color of their hair or other individual peculiarities, something not competent for the legislature to do."

The foregoing declaration has been cited and approved in numerous cases. Among them are the following:

State vs. Miksicek, 225 Mo., 561, 575; 125 S. W., 507, holding a statute requiring observance of certain police regulations by biscuit, bread and cake bakers, not required of pie, pastry and cracker bakers, as discriminatory between the same class of persons;

Schmalz vs. Wooley, 56 N. J. Eq., 655; 39 Atl., 539, holding void a statute protecting trade label of the Hatmakers' Union; and

Block vs. Schwartz, 27 Utah, 387, 400; 76 Pac., 22, holding discriminatory a bulk sales statute restricting the right of indebted merchants to contract, and making a violation of the statute a criminal offense.

The rule was also expressed in the case of *State ex Rel. Randolph vs. Wood*, 7 Atl., 286 (Supreme Court of N. J., 1886), as follows:

> "The law is to be regarded as general when its provisions apply to all objects of legislation distinguished alike by qualities and attributes which necessitate the legislation, or to which the enactment has manifest relation. Such law must embrace all, and exclude none, whose condition and wants render such legislation equally necessary or appropriate to them as a class."

The Supreme Court of Indiana, in the case of *Bedford Quarries Company vs. Bough*, 168 Ind., 671; 80 N. E., 529; 14 L. R. A. (N. S.), 418, 421, in holding an employers' liability act unconstitutional, which imposed on corporate employers burdens not imposed on individuals and partnerships engaged in the same occupations, said, in speaking of the classification:

> "Not only must the classification treat all brought under its influence alike, under the same conditions, but it must embrace all of the class to which it is naturally related."

The court cited with approval the case of *Johnson vs. St. Paul, etc., R. Co.*, 43 Minn., 222; 45 N. W., 156; 8 L. R. A., 419, to the effect that:

> "If a distinction is to be made as to the liability of employers to their employees, it must be based upon a difference in the nature of the employment, and not of the employers. * * * Not only must it treat alike, under the same conditions, all who are brought 'within its influence,' but in its classification it must bring within its influence all who are under the same conditions."

Conclusion.

In conclusion we desire to state:

1. That the Arizona statute herein questioned places burdens on certain restaurants that it does not impose on others;

2. That such restrictions, or burdens, as are not imposed on all restaurants are void unless the exception of so-called railroad restaurants from the operation of the law has some relation to the object of the law;

3. That the object of the law is the protection of female employees;

4. That the portion of the law exempting railroad restaurants from the twelve-hour restriction in question in this case bears no relation to the object of the law; and

5. That said twelve-hour restriction is therefore void in so far as it applies to restaurants and eating-houses.

Respectfully submitted,

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Counsel for Plaintiff in Error.

S. H. MORRIS,
JAMES R. MALOTT,
Of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1918.

No. 178.

DOMINION HOTEL, INC., Plaintiff in Error,

vs.

THE STATE OF ARIZONA,
Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE UNITED STATES.

BRIEF FOR THE STATE OF ARIZONA

WILEY E. JONES,
Attorney General of the State of Arizona, Attorney for DEFENDANT in ERROR.

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STATEMENT OF THE CASE

Plaintiff in error has made a statement of this case which is substantially correct, except that plaintiff in error states: "Such provision discriminates against the plaintiff in error and denies it the equal protection under the laws guaranteed by the 14th Amendment." The State takes issue with the plaintiff in error upon this statement, otherwise statement of the case is substantially correct and it is therefore unnecessary to make another statement of facts in this case.

ANSWER TO SPECIFICATIONS OF ERROR.

In specification of error plaintiff in error contends that that portion of Section 717 of the Penal Code of Arizona providing that where females are employed in restaurants or eating houses, their eight hour period of work shall be performed within a period of twelve hours, except when performed in railroad restaurants or eating houses located upon railroad rights-of-way and operated by or under contract with any railroad company violates the 14th Amendment of the Federal Constitution in that it denies the plaintiff in error the equal protection of the law. This specification of error, the State of Arizona denies. The classification complained of by plaintiff in error, is correct and properly relates to the purpose of the law. In enacting this law the intent and purpose of the Arizona Legislature was to safe-guard the health of female employes in certain designated occupations. The eight hour limitation on the number of hours that women can be required to work in Arizona in any one day applies to all restaurants and hotels whether owned and operated by railroad companies or individuals. This was done for the purpose of the welfare of society in the preservation of the health of the females of the State of Arizona.

ARGUMENT.

The Classification Is Properly Related to the Purpose of the Law.

The plaintiff in error contends that our statute involved in this case and construed by the Arizona Courts imposed upon some employers of female labor one restriction in their right to contract with their employes that is not imposed upon all employers of the same class.

It was clearly the intent of our law-makers to allow a reasonable classification to be made, and in so doing our legislature has placed in a different class restaurants and eating houses located upon and operated by railroad companies. Such classification we claim to be just and within their power.

We submit that this is not an arbitrary but a reasonable classification and in support whereof we set out in full the opinion of our Supreme Court in the case of the **State of Arizona, Appellant, vs. the Dominion Hotel, Incorporated** (151 Pac., Page 958) which opinion in full is as follows:

> "Cunningham, J. The respondent, Dominion Hotel Incorporated, was charged with the commission of an offense defined by paragraph 717, Penal Code of Arizona 1913.

Said paragraph is as follows:

"No female shall be employed or be permitted to work in any mercantile establishment, confectionery store, bakery, laundry, hotel, restaurant, or telephone or telegraph office or exchange, in this state, more than eight hours during any one day or more than fifty-six hours during any one week: Provided, that at least one hour for meals be allowed each female during her working period, but no part of such hour for meals shall be included as a part of the permitted working period: Provided further, that the said eight hour period of work shall be performed within a period of twelve hours, the period of twelve hours during which such labor must be performed not to be applicable to railroad restaurants or eating houses located upon railroad rights-of-way and operated by or under contract with any railroad company: And provided further, that in any such mercantile establishment, confectionery store, or bakery, where females are employed for six days only in any one week, two additional hours (making a total working period of ten hours) may be added to said permitted period of daily labor on one of said six working days, but in all cases the permitted period of daily labor must be performed

within said period of twelve hours: And provided further, that the provisions of this section shall not apply to females employed in any such telephone or telegraph office or exchange in which not more than three females are employed or to female nurses."

"Paragraph 720, Id., declares a violation of paragraph 717, supra, a misdemeanor and prescribes the punishment.

"The defendant (respondent), having waived a preliminary examination, was held to answer the charge before the Superior Court of Gila county. In due time the county attorney of that county filed an information, which, omitting the formal language, charges the offense as follows:

"That the Dominion Hotel Incorporated, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Arizona, and the said corporation is and heretofore has been, and was upon the second (2nd) day of March, A. D. 1914, engaged in the hotel business in Globe, Gila county, State of Arizona, and did then and there run and operate the Dominion Hotel, that said corporation did upon the second (2nd) day of March, A. D. 1914, unlawfully permit one Ada

Tessmer, a female person, to be employed by it in said hotel and work eight (8) hours, and that said eight (8) hours of work was not then and there performed within a period of twelve (12) hours, and the said Dominion Hotel, Incorporated, not being then and there engaged in the business of conducting a railroad restaurant or eating house located upon a railroad right of way, or operated by, or under contract, with any railroad company contrary." etc.

"To this information the defendant (respondent), interposed a demurrer "upon the ground that it appears upon the face of the information that it fails to state facts sufficient to constitute a crime or a public offense under the laws of Arizona, or at all." The demurrer was sustained, and the cause dismissed. From which order and judgment the state appeals.

"The respondent, in support of the ruling and judgment, contends that the statute, paragraph 717, supra, defining the offense set forth in the information violates the fourteenth amendment of the federal Constitution and sections 4 and 13 of article 2 of the state Constitution. The offense charged and defined by the statute is that the defendant permitted

Ada Tessmer, a female employe, to be employed about the operation of its business at a time not within the permitted hours of her employment; that is, defendant permitted said female employe to work a part of 8 hours in performing a day's work after a period of 12 hours elapsed from the time of the commencement of such day's work. The demurrer admits for all of its purposes and of this appeal, that respondent, in the operation of its hotel, did permit Ada Tessmer, a female then in its service, to be employed at a time not within the permitted hours of her employment. These facts admitted the commission of the offense defined in the statute, and it is liable to the punishment prescribed, unless the statute is a nullity.

"(1-3) The respondent contends that the statute is inoperative, because by its terms hotels of the class to which it belongs are not granted equal protection with restaurants or eating houses on railroad rights of way operated by a railroad company or under contract with the railroad company, that restaurants and eating houses coming within the exception of the statute are granted rights not granted to hotels conducting eating departments such as respondent, and hence

respondent is unjustly discriminated against and denied the equal protection of the law. Counsel assume that Ada Tessmer was employed as a waitress in respondent's dining room department. The statute limits the daily working period of female employes of all hotels and of all restaurants and eating houses and of all other designated occupations to 8 hours as one day, with minor exceptions not urged in this case. The permitted working period is determined in all occupations affected by paragraph 719 of said statute, providing:

" 'Every employer shall post in a conspicious place in every room where such females are employed, a printed notice stating the hours of commencing and stopping such work, the time allowed for dinner or other meals, and the maximum number of hours any female employe is permitted to work in any one day.'

"—thereby requiring all hotels, restaurants, and eating houses, without exception, in the respect under consideration, to define by a printed notice the permitted working hours of female employes. Such permitted working hours must be designated in such notice, so as to show the time of actual employment within the limits of the period of com-

mencement of the employment and its end, so that in the aggregate the time the female employe is required to be employed in the performance of her duty does not exceed 8 hours. Therefore the actual daily working period of female employes in the occupations mentioned in the statute is 8 hours in any one day; and the permitted working period of such employes in such occupation is that period of time limited by the printed and posted notice required by paragraph 719 of said statute. All hotels, restaurants, and eating houses, without exception, are required to post the printed notice defining the daily permitted working period of their female employes, and any hotel, restaurant, or eating house, without exception, permitting its female employes to be employed at a time other than the actual daily working period as defined by the said notice, is declared to be guilty of the offense defined.

Paragraph 718 of the statute provides:

"The employment of any female in any place or establishment defined in the preceding section, at any time other than those of the posted hours of labor, as herein provided for, shall be prima facie evidence of a violation of this act. (Section 717)."

—clearly showing that it was the intention of the Legislature to declare as a public offense the employment of female employes at times other than during the posted hours for eployment. Such are clearly the conditions essential to the public offense defined by the statute, of which respondent stands charged on the face of the information.

"The exception of which respondent complains as depriving it of the equal protection of the law, in violation of the fourteenth amendment of the federal Constitution and in violation of section 4 of article 2 of the state Constitution, reads as follows:

" 'Provided further, that the said eight hour period of work shall be performed within a period of twelve hours, the period of twelve hours during which such labor must be performed not to be applicable to railroad restaurants or eating houses located upon railroad rights of way and operated by or under contract with any railroad company.'

"Respondent's contention as stated in this brief, is this:

" 'That in providing that the 8-hour working period prescribed for females in certain designated occupations must

not extend over a period of more than 12 hours the Legislature has made such an unreasonable, unwarranted, and arbitrary regulation of the working hours of women as to be entirely without justification, even under the guise of an attempted exercise of so-called "police powers".'

"As we have seen above, the actual daily working hours for female employes are defined and fixed, not by the statute, but by the employer in the printed and posted notice. The actual daily working hours of such employes must be so defined and fixed by all employers engaged in the designated occupations, without exception; consequently it is clear that the exception complained of affects the notice required to be posted, as it concerns the contents of such notice. The notice printed and posted by the occupations not falling within the exception must fix the actual daily working hours within a limit of 12 hours of the day, while the proprietors of restaurants or eating houses located upon railroad rights of way and operated by the railroad company or under contract with the railroad company are likewise required to define and fix the actual daily working hours of female employes, but

within a limit of 24 hours of the day, by force of the exception.

"The question here raised is whether the statute allowing railroad restaurants and eating houses operated by railroad companies or under contract with railroad companies to define and fix the 8 actual daily working hours of their female employes within a limit of 24 hours, and prohibiting hotels and other restaurants and eating houses not located on railroad rights of way and not operated by railroad companies or under contract with railroad companies, from defining and fixing the 8 actual daily working hours of their female employes within 24 hours but restricting them to defining and fixing such actual working hours of their said employes within 12 hours, deprives such hotels and restaurants of the equal protection of the law, and discriminates unjustly against such hotels and restaurants, as it deprives them of the equal right to buy female labor and deprives the female employes from an equal right to sell their labor. The commodity subject to sale and purchase is 8 hours of labor. The employer in all occupations affected buys that commodity under contract with the employe. The statute restricts the rights of the parties

to such contract to deal, buy, and sell only 8 hours labor in one day. Such is the evident and primary object of the statute. The law is well settled that legislation which restricts the number of hours of labor which may be performed in one day in certain occupations declared detrimental or considered detrimental to the health or safety of the laborer is a valid exercise of the police power of the state. Lochner v. New York, 198 U. S. 45, 25 Sup. Ct. 539, 49 L. Ed. 937, 3 Ann. Cas. 1133; Holden v. Hardy, 169 U. S. 366, 18 Sup. Ct. 383, 42 L. Ed. 780; Ex parte Kair, 28 Nev. 425, 82 Pac. 453, 6 Ann. Cas. 893; State v. Livingston Concrete Bldg. & Mfg. Co., 34 Mont. 571, 87 Pac. 980, 9 Ann. Cas. 204.

"Occupations that may not come within such rule as detrimental or dangerous to health and safety as it affects male operatives may come within the rule when female operatives are affected, and thus become a valid subject of legislation under the police power of the state; that is, the legislation fixing the number of laboring hours of female employes may become valid legislation, but, when applied to males, the legislation would be invalid. See

"Muller v. Oregon 208 U. S. 412, 28 Sup. Ct. 324, 52 L. Ed. 551, 13 Ann. Cas. 957;

"Riley v. Massachusetts, 232 U. S. 671, 34 Sup. Ct. 469, 58 L. Ed. 788.

"The respondent concedes that legislation which limits the number of hours a female may be employed in hotel work during one day to 8 hours is within the the legislative power to reasonable regulate. To quote from respondent's brief, viz.:

" 'Laws regulating the number of hours of employment of women in certain occupations have been upheld by the highest courts of the respective states (named in the brief); those of Oregon and California having also been upheld by the Supreme Court of the United States. Each of these laws contains the specific provision that the hours of labor may be arranged at any time during the 24, so that the aggregate number of hours of labor does not exceed the prescribed limit'—citing Hawley v. Walker, 232 U. S. 718, 34 Sup. Ct. 479, 58 L. Ed. 813, as sustaining an Ohio statute, affirming 22 Ohio Sup. & C. P. 39, on authority of Muller v. Oregon, 208 U. S. 412, 28 Sup. Ct. 324, 52 L. Ed. 551, 13 Ann. Cas. 957.

"The Massachusetts statute under consideration in the Riley case, supra, provides that no child or woman shall be employed in laboring in any manufacturing or mechanical establishment more than 10 hours in any one day, except to make a shorter day's work for one day of the week, and in no case shall the hours of labor exceed 56 in the week. The court says:

"It is provided: 'Every employer shall post in a conspicious place in every room in which such persons are employed a printed notice stating the number of hours' work required of them on each day of the week, the hours of commencing and stopping work, and the hours when the time allowed for meals begins and ends.

" 'The employment of such persons at any time other than as stated in said printed notice shall be deemed a violation of the provisions of this section' " and punishable.

"The specific charge in that case is stated in the opinion to have been that the women were employed at 5 minutes of 1 o'clock in a room wherein was posted a notice in which it was stated that the time of commencing work was 6:50 a. m. and of stopping work was 6 p. m.

and that the time allowed for dinner began at 12 m. and ended at 1 p. m. Thus the offense consisted of permitting the women to be employed at their work 5 minutes before 1 o'clock p. m., the time stated in the posted notice as the time for them to commence work; hence they were employed at a time not permitted. The contention was made that the statute restricted the right to sell and buy labor, and therein infringed the liberty of contract assured by article 14 of the amendments to the Constitution of the United States. The court said: 'The contention is untenable expressed in this generality.' In Muller v. Oregon, 208 U. S. 412, 28 Sup. Ct. 324, 52 L. Ed. 551, 13 Ann. Cas. 957, against a similar contention, a statute of Oregon was sustained which prohibited the employment of women in mechanical factories and laundries working more than 10 hours any one day, with power, as in the Massachusetts statute, to apportion the hours through the day. That is a clear recognition of the right of the state both to limit the number of hours of employment of women in certain occupations, and, in the exercise of the right, the hours of employment may also be required to be apportioned through the day without offending the constitutional provision.

In the Riley case the notice prescribed the period of time from the commencing to the stopping of work as 11 hours and 10 minutes, then designated the working hours apportioning them within the said prescribed working period. The Supreme Court upholds the statute as valid. The Massachusetts statute requires the employer to limit in his notice the hours the female is permitted to work, and it seems he may designate the working and rest hours so as in the aggregate to include the full 24 hours, or he may so designate the working hours and the rest hours so that the aggregate permitted working hours of the day is 11; one hour for meals being absolutely required. In any event the employer is granted the right to designate the time of work and rest and apportion the hours of the day for work and rest as he deems to his advantage. Under our statute the employer in all the designated occupations is given the same liberty to apportion the hours of the day for work and rest. He is not limited to any particular hours of the day which he may apportion to work, and which he may apportion to rest. Employers operating hotels and restaurants other than railroad restaurants and eating houses may not designate exceeding 4 hours as hours of rest, one hour of

which must be designated as the hour for meals; while employers operating railroad restaurants and eating houses may, if they choose, designate in the notice one hour for meals and 15 hours for rest and 8 hours for work.

"The contention, in effect, is that, the railroad restaurants having granted them the right to designate in their printed notice more hours in which their female employes may not work than hotels and restaurants not operated by railroads are allowed to designate in their notices, the former are deprived of equal protection of the law. In this the respondent cannot be injured. The hours of labor is the item bought and sold, and the notice posted designates or must designate when that article must be delivered. The notice posted may require the employes of railroad restaurants and eating houses located on railroad rights of way to deliver 8 hours' labor within an aggregate period of 9 hours, and so may the notice posted by other hotels and restaurants. The matter of apportioning the hours of the day for the labor is left to the employer, with the one restriction upon hotels and restaurants, etc., not railroad hotels and eating houses, that they may apportion only 12 hours of the day, but

any 12 hours they have the right to apportion.

"The offense created by the statute is permitting the female employe to work at times not designated as a part of the working period. Clearly hotels and restaurants of all kinds may commit such offense, yet the commission of the offense would depend upon the notice posted, because upon the notice would depend the evidence of the working period, and that fact established the fact essential to a conviction must be established that the female employe was permitted to work at a time other than the working time specified in the notice. The fact that respondent and employers of like occupations are not permitted to apportion more than 12 hours of the day to the performance by female employes of 8 hours' work deprives them of no right of contract protected by the fourteenth amendment of the Constitution of the United States and section 4 of article 2 of the state Constitution. The statute in the particular mentioned is a reasonable regulation restricting the employer in apportioning the hours of rest, and not of labor. He has no property right in the hours of rest of his said employes, and to grant one employer the right to appor-

tion the hours of labor during the 24 hours of the day so that, in effect, the employer is able to apportion the hours of rest as well as the hours of labor, is the grant of no privilege or immunity to one employer that, withheld from another, deprives the other employer of equal protection when such other is permitted to apportion only 12 hours of the day for his employe. In either case no more than 8 daily working hours may be apportioned of one day, and the employers, without exception, have equal rights in making the apportionment. The contention made is without merit.

"(4) Respondent further contends that the exception found in the statute deprives employers of designated occupations not within the exception of privileges and immunities granted restaurants and eating houses located on railroad rights of way and operated by railroad companies or under contracts with railroad companies, that is, occupations falling within the exception, and that thereby it offends section 13, art. 2, of the state Constitution. Said section is as follows:

" 'No law shall be enacted granting to any citizen, class of citizens, or corporation other than municipal, privileges or

immunities which, upon the same terms, shall not equally belong to all citizens or corporations.'

"Without any doubt the statute grants to all the designated occupations the same privilege of apportioning the 8 daily working hours of female employes to any hours of the day or night deemed most profitable to the business or acceptable to the employer. Certainly no employer of female labor in the designated occupations is immune from punishment when he has permitted a female in his service to be employed at times other than during the designated hours of employment. No privilege or immunity is granted one employer that is not granted the other. The identical act is made a public offense if committed by either. If convicted the identical punishment for all is prescribed and may be the same in extent. The same degree of proof essential to a conviction is required, the same right of defense is given both, and the same defense of the charge may be interposed by either class.

" 'The employment of any female in any place or establishment defined in the preceding section (paragraph 717), at any time other than those of the posted hours of labor, as herein pro-

vided, for, shall be prima facie evidence of a violation of this act.' Paragraph 718, Penal Code, 1913.

"This rule of evidence applies to all employers described in the act. All employers have equal burdens. The respondent clearly has equal protection of the law with railroad restaurants and eating houses. It has the same right of defense. No greater punishment is provided. No different rule of evidence is prescribed, and no material discrimination is made by the exception.

"The order of the Court sustaining the demurrer to the information upon the ground that the information fails to state facts sufficient to constitute a public offense was erroneous. The judgment is reversed, and the cause remanded, with instructions to overrule the demurrer and proceed according to law.

"Reversed and remanded.

"ROSS, C. J. and FRANKLIN, J., Concur."

The Dominion Hotel, Incorporated, was again brought into court on the 28th day of February, 1914, for working a female, eight hours during a period of more than twelve hours as provided by law. The said Dominion Hotel, Incorporated, not being

a railroad eating house located upon railroad rights-of-way, or operated by or under contract with any railroad company. The said Dominion Hotel, Incorporated, was convicted and did appeal to the Supreme Court of Arizona and in the opinion of the Supreme Court of Arizona, Dominion Hotel, Inc. vs. State of Arizona, 161 Pac. 682, the judgment of the Lower Court was upheld which opinion is as follows, to-wit:

> "CUNNINGHAM, J. The questions of law raised in this case are identical with the questions raised and decided in the case of State v. Dominion Hotel, Inc., 17 Ariz. 267, 151 Pac. 958. In that case the female person employed was Ada Tessmer; and the date of the offense was March 2, 1914, while in this case the name of the female employe is Agnes Silka, and the date of the offense is February 28, 1914. In all other respects the informations are identical in language employed.
>
> "(1) The questions of law presented in this case will not be again discussed at length. However, on this appeal the further question is argued and may with profit be discussed, because such question was not referred to in the previous case; I have reference to the question raised in several different manners, but

will notice the question only as presented by the seventh assignment of error, viz.:

" 'The Court erred in refusing to give the instruction requested by the defendant, which is as follows: "If you find from the evidence that Agnes Silka was employed upon the 28th day of February, 1914, in the restaurant or dining room of the Dominion Hotel by the defendant Dominion Hotel, Inc., and that a printed notice stating the hours of labor of the said Agnes Silka was posted in a conspicious place in the room where the said Agnes Silka was employed, and that said hours of labor therein set forth did not exceed 8 hours, and if you further find that the said Agnes Silka was not permitted on said date to work for the defendant at times not designated as a part of the working period in said posted notice, you are instructed to render a verdict of not guilty." '

"Referring to the notice in evidence, it appears that the notice required, on its face, the female employes to commence work at 6 o'clock a. m., and to stop work at 8:30 o'clock p. m., thereby requiring such employes to be employed about the operation of appellant's business at a time not within the permitted hours of their employment; that is, defendant per-

mitted said female employe to work a part of 8 hours in performing a day's work, after a period of 12 hours elapsed from the time of the commencement of such day's work.

"The evidence of the witnesses tended to show, without conflict, that this employe actually worked at the times, and at all times, specified for working in the notice; that she commenced and stopped work at the times named in the notice. The instruction in question in effect told the jury that if they believed this evidence, then the law is that the terms of the notice posted control the matter of permitted hours of such employe's employment, and the statute limiting the period of employment to 12 hours is ineffective. In other words, the period of time in which female employes are permitted to deliver 8 hours' work, in restaurants and like occupations, is fixed by the notice posted, and not by the statute.

"In the former case, in 17 Ariz. 267, 270, 151 Pac. 958, we said that:

" 'The offense charged and defined by the statute is that the defendant permitted * * * a female employe to be employed about the operation of its business at a time not within the permitted hours of her employment; that is, de-

fendant permitted said female employe to work a part of 8 hours in performing a day's work after a period of 12 hours elapsed from the time of the commencement of such day's work.'

"The evidence in this record applicable to the instruction requested including the notice posted, and the testimony of the witnesses, tends to establish that Agnes Silka was required by the statements contained on the face of the posted notice, and did in fact work a part of 8 hours in performing a day's work after a period of 12 hours elapsed from the time of the commencement of such day's work, thereby, without conflict, supporting every essential requirement to establish the offense charged and defined by the statute as determined in 17 Arizona, supra. The requested instruction fails to recognize the nature of the offense charged and the application of the evidence establishing such offense, for that reason the court properly refused the instruction as requested.

"Appellant, in support of its contention, quoted, with confidence, the following passages from the opinion in the former case, viz.: 'The offense created by the statute is permitting the female employe to work at times not designated

as a part of the working period;' and 'the fact essential to a conviction must be established that the female employe was permitted to work at a time other than the working times specified in the notice.' These passages quoted were used in the former opinion with reference to all of the offenses defined by paragraph 717, supra, including all classes of employment, in arguing the proposition whether the employer-defendant was deprived of the equal protection of the law with railroad restaurant keepers and restaurants located upon railroad rights of way and operated under contract with railroad companies. It was there contended that operators of restaurants, hotels, and eating houses, not falling within the class of railroad restaurants, were deprived of equal protection of the law, for the reason owners of the class to which respondent belonged were not permitted by the statute to cause their female employes, waitresses, to work as a portion of an 8-hour day, after the 12-hour period had elapsed, while owners of railroad restaurants, etc., by reason of the exception in the statute could cause their female waitresses to work an aggregate of 8 hours at any times during the whole 24 hours of the day. In that case the respondent there, the appellant here,

assumed that if the statute was valid, the notice posted directing the hours for work by its female waitresses must limit the period for work to 8 hours and such 8 hours' work must be performed within a period of 12 hours. Respondent's contention in that case, was based upon such assumption, and this Court likewise indulged the same in its references to the notice posted. The Court in its opinion says, immediately following the last word quoted:

" 'The fact that respondent and employers of like occupations are not permitted to apportion more than 12 hours of the day to the performance by female employes of 8 hours' work deprives them of no right of contract protected by the Fourteenth Amendment to the Constitution of the United States and section 4 of article 2 of the state Constitution.'

"We held in the former case, and this holding is within the clear, plain, unmistakable, terms of the statute, that the offense charged in the information, and defined by the statute, 'is that the defendant permitted * * * a female employe to be employed about the operation of its business at a time not within the permitted hours of her employment; that is, defendant permitted said female em-

ploye to work a part of 8 hours in performing a day's work after a period of 12 hours elapsed from the time of the commencement of such day's work.' We said (17 Ariz. 270, 151 Pac. 959): 'These facts admitted the commission of the offense defined in the statute;' that is, the demurrer admitted the facts referred to.

"(2) The facts appearing that the female employe performed labor only at the times specified in the posted notice for actual work is not sufficient as a defense, unless the further fact appears that the notice required the day's work to be performed within a period of 12 hours from the time of commencing to the time of stopping, and that the prosecution relied upon paragraph 718, Penal Code, for a conviction under evidence that the female employe was permitted to work at times other than those of the posted notice. Such was not the theory relied upon in this case for a conviction. Had such theory for conviction been relied upon the instruction requested would have still failed to present a correct proposition of law, because it fails to take into consideration that the posted notice must require the 8 hours' work period to fall within a period of 12 hours, otherwise, it is invalid as a binding notice when in-

tended to affect the employment here under consideration.

"The record contains no error, and the judgment is therefore affirmed.

"ROSS, C. J. and FRANKLIN, J, Concur."

Particular circumstances which surround particular persons or corporations are ample grounds for holding laws which discriminate for or against them valid, 8 Cyc. 1052.

It is our contention that the Supreme Court of the State of Arizona was correct in holding that our law is constitutional and that the reasoning set forth in the above opinion is correct, the Legislature may select and classify objects of legislation, and in so doing, must necessarily have a wide range of discretion. No law could be made upon the subject of classification that would please all persons falling within a designated class. This, however, would not render such legislation unconstitutional, if so, no classification whatever upon any subject could be made by the law-making power.

Our Legislature has placed in a class of its own all restaurants and eating houses located upon railroad rights of way and operated by railroad companies. We submit that such classification in a state like Arizona which is sparsely settled, most of its towns

upon main line railroads where railroad eating houses are located are small and practically the only time that employes of such railroad eating houses are required to work is during the time trains stop for allowing the passengers to eat. This work places such railroad eating houses in a class entirely different and distinct from other restaurants and eating houses in our state and for that reason we believe that such classification as was made by our Legislature is reasonable and just and not arbitrary in any manner whatsoever.

Our law certainly effects all members of the same class alike; that is, all restaurants and eating houses not being owned or operated by railroads in one class and in another class all railroad restaurants and eating houses. Our law does not effect any members of either of the two classes differently and therefore does not discriminate against anyone and is therefore constitutional and not in violation of the Fourteenth Amendment to the Federal Constitution.

CONCLUSION.

In conclusion we desire to state, (1) That the Arizona statute herein questioned does not place any burden upon any restaurant that it does not impose on others of the same

class. (2) That the object of the law is the protection of female employes. (3) That for the reasons heretofore stated in this brief, that portion of the law exempting railroad restaurants from the twelve hour restriction in question relates to the object of the law. (4) That the classification made by our law is legal as applying to restaurants and eating houses and is not repugnant to the Fourteenth Amendment of the Federal Constitution.

Respectfully submitted,

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